

# TAR

TENNESSEE ADMINISTRATIVE REGISTER



**February 15, 2006**  
**Volume 32, Number 2**

**RILEY C. DARNELL**  
*Secretary of State*

Division of Publications  
8th Floor, Snodgrass-Tennessee Tower  
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## PREFACE

**The Tennessee Administrative Register (T.A.R)** is an official publication of the Tennessee Department of State. The *T.A.R.* is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The *T.A.R.* contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Commerce and Insurance, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

**Emergency Rules** are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the *T.A.R.* after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

**Proposed Rules** are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the *T.A.R.*, the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the *T.A.R.* of the following month.

**Public Necessity Rules** are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the *T.A.R.* Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

**Wildlife Proclamations** contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the *T.A.R.*, they are not published in the *official compilation-Rules and Regulations of the State of Tennessee*.

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**Copies of Rules from Back Issues** of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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## **ANNOUNCEMENTS**

### **TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE**

#### **NOTICE OF WITHDRAWAL OF RULES**

The Bureau of TennCare hereby gives notice of withdrawal of rules 1200-13-13-.11(1)(d)3. and 4.; 1200-13-13-.11(4)(g)6.; 1200-13-13-.11(5)(a)5.; 1200-13-13-.11(5)(e) and (f) and 1200-13-13-.11(7)(h) Appeal of Adverse Actions Affecting TennCare Services or Benefits filed with the Department of State on the 27th day of October, 2005, to have become effective on the 10th day of January, 2006.

J. D. Hickey  
Deputy Commissioner  
Tennessee Department of Finance  
and Administration

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 6th day of January, 2006. (01-06)

ANNOUNCEMENTS

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

**NOTICE OF WITHDRAWAL OF RULES**

The Bureau of TennCare hereby gives notice of withdrawal of rules 1200-13-14-.11(1)(d)3. and 4.; 1200-13-14-.11(4)(g)6.; 1200-13-14-.11(5)(a)5.; 1200-13-14-.11(5)(e) and (f) and 1200-13-14-.11(7)(h) Appeal of Adverse Actions Affecting TennCare Services or Benefits filed with the Department of State on the 27th day of October, 2005, to have become effective on the 10th day of January, 2006.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 6th day of January, 2006. (01-07)

ANNOUNCEMENTS

**DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180**

**ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 11.32%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

Greg Gonzales

**DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180**

**ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST**

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of March 2006 is 8.82 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 4.82 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Greg Gonzales

## ANNOUNCEMENTS

### **GOVERNMENT OPERATIONS COMMITTEES**

#### **ANNOUNCEMENT OF PUBLIC HEARINGS**

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3072.



ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-01	Jan 3, 2006	<b>1200 Health</b> Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-24</i> <i>Standards for Birthing Centers</i> 1200-8-24-.01 Definitions 1200-8-24-.06 Basic Birthing Center Functions 1200-8-24-.07 Building Standards 1200-8-24-.08 Life Safety 1200-8-24-.11 Patient Rights 1200-8-24-.12 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Mar 19, 2006
01-02	Jan 3, 2006	<b>1200 Health</b> Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-17</i> <i>Alcohol and other Drugs of Abuse Residential Rehabilitation Treatment Facilities</i> 1200-8-17-.01 Definitions 1200-8-17-.07 Building Standards 1200-8-17-.08 Life Safety 1200-8-17-.12 Policies and Procedures for Health Care Decision-Making for Incompetent Clients	Ernest Sykes Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Mar 19, 2006
01-04	Jan 4, 2006	<b>1200 Health</b> Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-23</i> <i>Alcohol and other Drugs of Abuse Residential Detoxification Treatment Facilities</i> 1200-8-23-.01 Definitions 1200-8-23-.07 Building Standards 1200-8-23-.08 Life Safety 1200-8-23-.12 Policies and Procedures for Health Care Decision-Making for Incompetent Clients	Ernest Sykes Health OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Mar 20, 2006
01-05	Jan 5, 2006	<b>0260 Chiropractic Examination</b>	Rulemaking Hearing Rules	Amendments	<i>Chapter 0260-2</i> <i>General Rules Governing Chiropractic Examiners</i> 0260-2-.12 Continuing Education  <i>Chapter 0260-3</i> <i>General Rules Governing Chiropractic X-Ray Technologists</i> 0260-3-.08 Examination 0260-3-.12 Continuing Education  <i>Chapter 0260-5</i> <i>General Rules Governing Chiropractic Therapy Assistants</i> 0260-5-.12 Continuing Education	Robert J. Kraemer, Jr. Health OGC 26th FI TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Mar 21, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-06	Jan 6, 2006	<b>0620</b> <b>Finance and Administration</b> Bureau of TennCare	Announcement	Notice of Withdrawal of Rules	1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits	J.D. Hickey	Original filed Oct 27, 2005; effective Jan 10, 2006
01-07	Jan 6, 2006	<b>0620</b> <b>Finance and Administration</b> Bureau of TennCare	Announcement	Notice of Withdrawal of Rules	1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits	J.D. Hickey	Original filed Oct 27, 2005; effective Jan 10, 2006
01-08	Jan 6, 2006	<b>1240</b> <b>Human Services</b> Child Support Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-2-4</i> <i>Child Support Guidelines</i> 1240-2-4-.05 Modification of Child Support Orders	Barbara Broersma Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Mar 22, 2006
01-09	Jan 5, 2006	<b>0520</b> <b>Education</b>	Proposed Rules	Amendments	<i>Chapter 0520-1-2</i> <i>Administrative Rules and Regulations</i> 0520-1-2-.02 Salary Schedules	Rich Haglund 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-741-2966	May 31, 2006
01-10	Jan 6, 2006	<b>0030</b> <b>Commission on Aging and Disability</b>	Proposed Rules	Amendment	<i>Chapter 0030-1-6</i> <i>Requirement to Verify Background Information for New Employees and Volunteers</i> 0030-1-6-.04 Checking Employment and Personal References	Nancy C. Peace, Executive Director, Andrew Jackson Building, 500 Deaderick Street, Suite 825, Nashville, TN 37243-0860.	May 31, 2006
01-11	Jan 11, 2006	<b>0400</b> <b>Environment and Conservation</b> Solid Waste Management	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-1-7</i> <i>Solid Waste Processing and Disposal</i> 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste	Glen Pugh Solid Waste Management L & C Twr 5th Fl 401 Church St Nashville TN 37243 (615) 532-0818	Mar 27, 2006
01-17	Jan 16, 2006	<b>0620</b> <b>Finance and Administration</b> Bureau of TennCare	Rulemaking Hearing Rule	Amendment	<i>Chapter 1200-13-1</i> <i>General Rules</i> 1200-13-1-.06 Provider Reimbursement	George Woods Bureau of TennCare 310 Great Circle Road Nashville Tn 37243 615-507-6446	April 1, 2006
01-20	Jan 18, 2006	<b>1000</b> <b>Nursing</b>	Rulemaking Hearing Rules		<i>Chapter 1000-2</i> <i>Rules and Regulations of Licensed Practical Nurses</i> 1000-2-.15 Scope of Practice	Richard Russell Office of General Counsel 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	April 3, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-21	Jan 19, 2006	<b>0780 Commerce and Insurance</b> Office of the Commissioner	Rulemaking Hearing Rules	New Rules	<i>Chapter 0780-7-1</i> <i>Office of the Commissioner</i> 0780-7-1-.01 Internet Convenience Fee	Christy A. Allen Commerce and Insurance Office of Legal Counsel 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	April 4, 2006
01-22	Jan 20, 2006	<b>1180 Psychology</b>	Notice of Stay of Effective Date of Rules		1180-1-.01, 1180-1-.03, 1180-1-.05, 1180-1-.07, 1180-2-.03, 1180-2-.04, 1180-2-.05, 1180-2-.06, 1180-3-.03, 1180-3-.04, and 1180-3-.05		Originally filed Nov 11, 2006; effective Jan 24, 2006  Mar 20, 2006
01-23	Jan 23, 2006	<b>1200 Health</b> Division of Health Related Boards	Proposed Rules	Amendments	<i>Chapter 1200-10-2</i> <i>General Rules and Regulations Governing the</i> <i>Practice of Reflexology</i> 1200-10-2-.04 Registration Applications and Requirements	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247 0120 (615) 741 1611	May 31, 2006
01-24	Jan 24, 2006	<b>1200 Health</b> Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-25</i> <i>Standards for Assisted-Care Living Facilities</i> 1200-8-25-.01 Definitions 1200-8-25-.07 Building Standards 1200-8-25-.08 Life Safety 1200-8-25-.12 Policies and Procedures for Health Care Decision-Making for Incompetent Residents	Ernest Sykes Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	April 9, 2006
01-29	Jan 26, 2006	<b>0450 Board for Professional Counselors, Marital and Fam- ily Therapists, and Clinical Pastoral Therapists</b>	Rulemaking Hearing Rules	Amendment	<i>Chapter 0450-2</i> <i>General Rules Governing Marital and Family</i> <i>Therapists</i> 0450-2-.04 Qualifications for Licensure	Richard F. Russell Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 30, 2006
01-31	Jan 27, 2006	<b>0800 Labor and Workforce Development</b> Division of Labor Standards	Proposed Rules	New Rules	<i>Chapter 0800-5-3</i> <i>Board of Employee Assistance Professionals Rules</i> 0800-5-3-.10 Requirements for Retired License 0800-5-3-.11 Requirements for Reinstatement of License 0800-5-3-.10 Requirements for Retired of License	Sydne Ewell Labor and Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243 615-741-4356	May 31, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-33	Jan 30, 2006	<b>0800 Labor and Workforce Development</b> Division of Workers' Compensation	Rulemaking Hearing Rules	New Rules	<i>Chapter 0800-2-20 Medical Impairment Rating Registry Program</i> 0800-2-20-.01 Definitions. 0800-2-20-.02 Purpose and scope. 0800-2-20-.03 Severability. 0800-2-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry. 0800-2-20-.05 Application Procedures for Physicians to Join the Registry. 0800-2-20-.06 Requests for a MIR Registry Physician. 0800-2-20-.07 Payments/Fees. 0800-2-20-.08 Multiple Impairment Rating Evaluations. 0800-2-20-.09 Communication with Registry Physicians. 0800-2-20-.10 Requirements for the Evaluation. 0800-2-20-.11 Requirements for the "MIR Impairment Rating Report." 0800-2-20-.12 Peer Review. 0800-2-20-.13 Removal of a Physician from the Registry. 0800-2-20-.14 Other Penalties. 0800-2-20-.15 Time Limits. 0800-2-20-.16 Cooperation. 0800-2-20-.17 Overturning a MIR Physician's Opinion.	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	April 15, 2006
01-34	Jan 31, 2006	<b>0940 Mental Health and Developmental Disabilities</b> Office of the Commissioner	Rulemaking Hearing Rules	New RULES	<i>Chapter 0940-1-7 Conflict Resolution</i> 0940-1-7-.01 Purpose 0940-1-7-.02 Scope 0940-1-7-.03 Definition 0940-1-7-.04 Duties of Licensees 0940-1-7-.05 Rights of Service Recipients 0940-1-7-.06 Procedures	Cynthia Clark Tyler Mental Health and Developmental Disabilities Third Floor, Cordell Hull Building 425 Fifth Avenue North Nashville, TN 37243 (615) 532-6520	April 16, 2006
01-38	Jan 30, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.02 Eligibility	George Woods Bureau of TennCare 310 Great Circle Road Nashville Tennessee 37243 (615) 507-6446	Jan 30, 2006 through July 14, 2006

ANNOUNCEMENTS

**TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720**

**NOTICE OF BEGINNING OF REVIEW CYCLE**

Visit the Tennessee Health Services and Development Agency web site at: <http://www.state.tn.us/hsda/> for the latest Notice of Beginning of Review Cycle.

## ANNOUNCEMENTS

### **BOARD OF EXAMINERS IN PSYCHOLOGY - 1180**

#### **NOTICE OF STAY OF EFFECTIVE DATE OF RULES**

The Board of Examiners in Psychology gives notice that the seventy-five (75) day period for amendments to Rules 1180-1-.01, 1180-1-.03, 1180-1-.05, 1180-1-.07, 1180-2-.03, 1180-2-.04, 1180-2-.05, 1180-2-.06, 1180-3-.03, 1180-3-.04, and 1180-3-.05, filed with the Department of State on the 11th day of November, 2005 to have become effective on the 24th day of January, 2006 is hereby stayed for sixty (60) days. Period of time not to exceed sixty (60) days.

The notice of stay set out herein was properly filed in the Department of State on the 20th day of January, 2006, and will be effective from the date of filing for a period of sixty (60) days. The stay of effective date of rules will remain in effect through the 20th day of March, 2006, unless properly withdrawn by the agency. (01-22)

## **EMERGENCY RULES**

### **EMERGENCY RULES NOW IN EFFECT**

#### **FOR TEXT OF EMERGENCY RULE SEE T.A.R. CITED**

- 0400 - Department of Environment and Conservation - Division of Underground Storage Tanks - Emergency rules addressing nonmetallic underground piping connected to petroleum underground storage tanks, Chapter 1200-1-15 Underground Storage Tanks, 11 T.A.R., Volume 31, Number 11 (November 2005) - Filed October 28, 2005; effective through April 11, 2006. (10-37)
- 0800 - Department of Labor - Division of Boiler and Elevator Inspection - Emergency Rule regarding the standards for the emergency keyed lock box in elevators, Chapter 0800-3-15 Fire Safety for Elevators, 11 T.A.R., Volume 31, Number 11 (November 2005) - Filed October 11, 2005; effective through March 25, 2006. (10-12)
- 1240 - Department of Human Services - Child Support Services Division - Emergency rules dealing with Income Shares Guidelines methodology, Chapter 1240-2-4 Child Support Guidelines, 11 T.A.R., Volume 31, Number 11 (November 2005) - Filed October 14, 2005; effective through March 28, 2006. (10-16)

## **PROPOSED RULES**

### **TENNESSEE COMMISSION ON AGING AND DISABILITY – 0030**

#### **CHAPTER 0030-1-6 REQUIREMENT TO VERIFY BACKGROUND INFORMATION FOR NEW EMPLOYEES AND VOLUNTEERS**

Presented herein is a proposed amendment of the Commission on Aging and Disability submitted pursuant to Tennessee Code Annotated, Section 4-5-202, and pursuant to Public Chapter 465 of the Public Acts of 2004 in lieu of a rulemaking hearing. It is the intent of the Commission on Aging and Disability to promulgate this rule amendment without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendment is published. Such petition to be effective must be filed in the office of the Commission on Aging and Disability, Suite 825 Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37243-0860 and in the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule amendment, or an association of twenty five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact:

Nancy C. Brode, Supervisor of Planning, Commission on Aging and Disability, Suite 825 Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37243-0860, (615) 741-2056.

The text of the proposed amendment is as follows:

#### **AMENDMENT**

Subparagraph (c) of paragraph (1) of rule 0030-1-6-.04 Checking Employment and Personal References is amended by deleting the subparagraph in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (c) Prior to employment, or volunteer affiliation, of such person, employing organizations shall verify background information as required by this subsection.

*Authority: T.C.A. §§4-5-202, 71-2-105(b)(1), and 71-2-111(b).*

The proposed rules set out herein were properly filed in the Department of State on the 6th day of January, 2006, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 31st day of May, 2006. (01-10)



PROPOSED RULES

**BOARD OF EDUCATION - 0520**

**CHAPTER 0520-1-2  
ADMINISTRATIVE RULES AND REGULATIONS**

Presented herein are proposed rules and amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor, Tennessee Tower-William R. Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact: Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, 615-741-2966.

The text of the proposed rules and amendments is as follows:

**AMENDMENTS**

Part 7. of subparagraph (a) of paragraph (3) of rule 0520-1-2-.02 Salary Schedules is amended by deleting the phrase, "prior to May 31, 1975" in its entirety so that amended the part shall read:

7. Active military services in the armed forces of the United States shall be recognized. Military service in the Reserve or in the National Guard, other than active duty, shall not be counted.

**Authority:** T.C.A. §49-5-402.

The proposed rules set out herein were properly filed in the Department of State on the 5th day of January, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 31st day of May, 2006. (01-09)

PROPOSED RULES

**DEPARTMENT OF HEALTH - 1200  
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 1200-10-2  
GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF REFLEXOLOGY**

Presented herein are amendments of the Department of Health, Division of Health Related Boards submitted pursuant to Tennessee Code Annotated, Section 4-5-202. It is the intent of the Department of Health, Division of Health Related Boards, to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendment is published. Such petition to be effective must be filed in the office of the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee 37247-1010 and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule amendments, or submitted by a municipality which will be affected by the rule amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

The text of the proposed amendments is as follows:

**AMENDMENTS**

Rule 1200-10-2-.04, Registration Applications and Requirements, is amended by deleting subparagraph (2) (f) in its entirety and substituting instead the following language

- (2) (f) It is the applicant's responsibility to request the information required in subparagraph (f) be submitted directly from each such licensing agency to the Administrative Office.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-30-106, and 63-30-112.

Rule 1200-10-2-.04, Registration Applications and Requirements, is amended by adding the following language as new subparagraph (2) (e) and renumbering the remaining subparagraphs accordingly:

- (2) (e) An applicant shall cause to be submitted to the Administrative Office directly from the vendor identified in the Division's registration application materials, the result of a criminal background check.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-30-111, and 63-30-112.

The proposed rules set out herein were properly filed in the Department of State on the 23rd day of January, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 31st day of May, 2006. (01-23)

PROPOSED RULES

**THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800  
DIVISION OF LABOR STANDARDS**

**CHAPTER 0800-5-3  
BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS RULES**

Presented herein are proposed rules and amendments of the Board of Employee Assistance Professionals, Department of Labor and Workforce Development submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Board of Employee Assistance Professionals, Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules and amendments are published. Such petition to be effective must be filed in the Division of Labor Standards of the Department of Labor and Workforce Development on the 16th Floor of the Parkway Towers Building, Suite 1606, located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0657, and in the Administrative Procedures Division of the Department of State, 8<sup>th</sup> Floor, Tennessee Tower, William R. Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed rules and amendments, contact: Mary Ellen Grace, Director of Labor Standards, Department of Labor and Workforce Development, 16th Floor of the Parkway Towers Building, Suite 1606, located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0657, 615-741-2858 (option 3).

The text of the proposed rules and amendments is as follows:

**NEW RULES**

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0800-5-3-.10 Requirements for Retired License  
0800-5-3-.11 Requirements for Reinstatement of License

**0800-5-3-.10 REQUIREMENTS FOR RETIRED LICENSE.**

- (1) Any EAP who is not engaged in work or activities which require a license may apply for a retired license.
- (2) All applications to retire shall contain the following:
  - (a) Completed application to retire accompanied by the current active license to be returned to the Board.
  - (b) Retired license fee as required by Rule 0800-5-3-.05(4).
- (3) Upon acceptance and approval of the application to retire, the Board shall issue a retired inactive license to the EAP.
- (4) The holder of a retired license shall not be entitled to practice as an EAP until the license has been reinstated in accordance with Rule 0800-5-3-.11.

## PROPOSED RULES

**Authority:** T.C.A. §§ 4-3-1411, 62-42-103, 62-42-105, 62-42-106, and 62-42-119.

### **0800-5-3-.11 REQUIREMENTS FOR REINSTATEMENT OF LICENSE.**

- (1) All reinstatement applications shall contain the following:
  - (a) Completed reinstatement application to be returned to the Board.
  - (b) Proof of required CEH/PDH on a completed CEH/PDH form as required by Rules 0800-5-3-.03(1) and (2).
  - (c) Proof of current liability insurance, \$1,000,000/occurrence; \$3,000,000/aggregate.
    1. The applicant shall include his or her name and license number on the proof of insurance form.
  - (d) Reinstatement license fee as required by Rule 0800-5-3-.05(5).

**Authority:** T.C.A. §§ 4-3-1411, 62-42-103, 62-42-105, 62-42-106, and 62-42-119.

## **AMENDMENTS**

Paragraph (2) of Rule 0800-5-3-.03 Continuing Education is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (2) CEH/PDH will be submitted on a completed CEH/PDH form upon application for renewal or reinstatement of license.

**Authority:** T.C.A. §§ 4-3-1411, 62-42-103, 62-42-104, and 62-42-119.

Part 2 of subparagraph (b) of paragraph (1) of Rule 0800-5-3-.04 Standards of Activities is amended by deleting the word "date" after the word "demographic", and substituting it with the word "data", so that as amended the rule shall read:

2. Document demographic data, initial assessment, EAP recommendations, and follow up contacts.

**Authority:** T.C.A. §§ 62-42-102, 62-42-103, 62-42-104 and 4-5-202.

Rule 0800-5-3-.05 Fees is amended by deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

### **0800-5-3-.05 FEES.**

- (1) The applicant must submit an application fee of fifty dollars (\$50.00) in order to be considered for licensure by the Board. The fee shall be nonrefundable.

## PROPOSED RULES

- (2) The initial license fee shall be one hundred dollars (\$100.00). The fee is nonrefundable.
- (3) The renewal license fee shall be one hundred dollars (\$100.00) for a period of one (1) year. The fee is nonrefundable.
- (4) The retired license fee shall be twenty-five dollars (\$25.00) for a period of one (1) year from the date on the retired license. The fee is nonrefundable.
  - (a) If the inactive licensee wishes to remain inactive for any portion of a subsequent calendar year, the fee shall be twenty-five dollars (\$25.00). The fee is nonrefundable.
- (5) The reinstatement license fee shall be prorated on a quarterly basis at a rate of twenty-five dollars (\$25.00) per quarter. The fee is nonrefundable.
- (6) The intern application fee shall be fifty dollars (\$50.00). The fee is nonrefundable.

**Authority:** T.C.A. §§ 4-3-1411, 62-42-103, 62-42-105, 62-42-106, 62-42-107, and 62-42-119.

Subparagraph (f) of paragraph (1) of Rule 0800-5-3-.07 Requirements for Internship is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (f) Submit the intern application fee as required by Rule 0800-5-3-.05(6).

**Authority:** T.C.A. §§ 4-3-1411, 62-42-103, 62-42-104, and 62-42-119.

Subparagraph (a) of paragraph (1) of Rule 0800-5-3-.09 Requirements for Renewal of License is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (a) Completed renewal application to be returned to the board thirty (30) days prior to the expiration of such license.

**Authority:** T.C.A. §§ 4-3-1411, 62-42-103, 62-42-105, 62-42-106, and 62-42-119.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of January, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 31st day of May, 2006. (01-31)

## **PUBLIC NECESSITY RULES**

### **PUBLIC NECESSITY RULES NOW IN EFFECT**

FOR TEXT OF PUBLIC NECESSITY RULE, SEE T.A.R. CITED

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-1 General Rules, 10 T.A.R. (October 2005) - Filed September 26, 2005; effective through March 10, 2006. (09-29)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning changes resulting from the amendment of the TennCare waiver, chapter 1200-13-13 TennCare Medicaid, 10 T.A.R. (October 2005) - Filed September 7, 2005; effective through February 19, 2006. (09-12)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules allowing for the disenrollment of Medically Needy dual eligibles on or after January 1, 2006, chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 9, 2005; effective through May 23, 2006. (12-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment., chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-38)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment., chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-39)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Standard rules to reflect changes resulting from court orders and a state plan amendment, chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-40)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver, chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-41)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-17 Medical Cost Containment Program, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-21)

## PUBLIC NECESSITY RULES

- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-18 Medical Fee Schedule, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-22)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-19 In-Patient Hospital Fee Schedule, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-23)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-20 Medical Impairment Rating Registry Program, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-24)
- 1220 - Tennessee Regulatory Authority - Public Necessity Rules dealing with standards and procedures to implement certain financial security requirements regarding wastewater services by public utilities, Chapter 1220-4-13 Wastewater Regulations, 1 T.A.R. (January 2006) - Filed December 29, 2006; effective through June 12, 2006. (12-36)
- 1240 - Department of Human Services - Medical Services Division - Public Necessity Rules promulgated to avoid loss of federal funds, chapter 1240-3-3 Technical and Financial Eligibility Requirements for Medicaid, 10 T.A.R. (October 2005) - Filed September 30, 2005; effective through March 14, 2006. (09-41)
- 1640 - TN Student Assistance Corporation - Public Necessity rule dealing with lottery scholarships, Chapter 1640-1-19 TN Educational Lottery Scholarship Program, Volume 31, Number 11 (November 2005) - Filed October 4, 2005; effective through March 18, 2006. (10-02)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-1  
GENERAL RULES**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

This rule is being amended to allow for a Presumptive Eligibility process that will provide short term temporary and limited eligibility to persons who are likely to qualify for regular institutional Medicaid eligibility pursuant to DHS Rule 1240-3-3-.02(9) and provide them with home services that will keep them out of nursing homes at no financial risk to the person. This process serves to bolster the safety net in providing services to persons who are not now or are no longer eligible for TennCare. The presumptive eligibility program will be effective on or about February 1, 2006.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey  
Deputy Commissioner  
Tennessee Department of Finance  
and Administration



PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES  
OF  
THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION**

**BUREAU OF TENNCARE**

**CHAPTER 1200-13-1  
GENERAL RULES**

**AMENDMENT**

Rule 1200-13-1-.02 Eligibility is amended by adding a new paragraph (9) which shall read as follows:

- (9) TennCare may provide a 45 day period of presumptive eligibility in conjunction with an approved Pre-Admission Evaluation for persons seeking admission to a Home and Community Based Services program as described in rules 1200-13-1-.17, 1200-13-1-.26 or 1200-13-1-.27. Such Presumptive Eligibility shall only be valid for the payment of covered services provided in the Home and Community Based Services program during the period of presumptive eligibility. Such Presumptive Eligibility shall not be valid for the payment of any Medicaid services other than those covered in the Home and Community Based Services program.

**Authority:** *T.C.A. 4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.*

The Public Necessity rules set out herein were properly filed in the Department of State on the 30th day of January, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 14th day of July, 2006. (01-32)

## **RULEMAKING HEARINGS**

### **DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF REGULATORY BOARDS**

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. § 62-6-303. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. (Central Time) on Thursday, March 23, 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5<sup>th</sup> Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this Notice of Rulemaking Hearing, contact Carol Kennedy, Home Inspector Licensing Program, 500 James Robertson Parkway, 2<sup>nd</sup> Floor, Nashville, Tennessee 37243 at (615) 253-1743.

## **SUBSTANCE OF PROPOSED RULES**

### **NEW RULES**

#### **CHAPTER 0780-5-12 HOME INSPECTORS**

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## RULEMAKING HEARINGS

### **0780-5-12-.01 PURPOSE.**

The rules in this chapter implement the Tennessee Home Inspector License Act of 2005, T.C.A. § 62-6-301 et seq.

**Authority:** *Chapter 65 of the Public Acts of 2005, §§ 4 and 12 and T.C.A. §§ 62-6-301 and 62-6-303(a)(5) [effective July 1, 2006].*

### **0780-5-12-.02 DEFINITIONS.**

In addition to the definitions contained in T.C.A. § 62-6-302, the following definitions are applicable to this chapter:

- (1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;
- (2) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied as a prerequisite for renewal of a license as a home inspector;
- (3) "Home" or "Residence" means any structure consisting of from one to four (1-4) dwelling units, intended to be or used principally for residential purposes;
- (4) "Instructor" means an individual who presents course materials approved for qualifying education and continuing education credit hours that has the necessary experience, training or education in the course subject matter and has been approved by the commissioner;
- (5) "Licensee" means an individual who holds a current, unexpired license as a home inspector issued by the commissioner;
- (6) "Provider" means an individual or entity offering courses approved by the commissioner for qualifying education or continuing education credit hours;
- (7) "Qualifying Education" means education that is creditable toward the education requirements required for initial licensure as a home inspector.

**Authority:** *Chapter 65 of the Public Acts of 2005, §§ 3, 4 and 12 and T.C.A. §§ 62-6-302 and 62-6-303(a)(5) [effective July 1, 2006].*

### **0780-5-12-.03 APPLICATION FOR LICENSE.**

- (1) Any person who seeks to be licensed as a home inspector shall complete an application on a form prescribed by the commissioner and submit the completed application to the commissioner.
- (2) Applications for licensure are available upon request from the commissioner.
- (3) Any application submitted which lacks required information or reflects a failure to meet any requirement for licensure will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for licensure and will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from the date of application.

## RULEMAKING HEARINGS

- (4) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded.

**Authority:** *Chapter 65 of the Public Acts of 2005, §§ 4, 6 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-305 [effective July 1, 2006].*

### **0780-5-12-.04 APPLICATION REQUIREMENTS.**

- (1) Beginning July 1, 2006, any person who desires to obtain a license as a home inspector shall submit an application to the commissioner, along with the required application fee.
- (2) On or after July 1, 2006 but before December 28, 2006, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:
  - (a) Is at least eighteen (18) years of age;
  - (b) Has graduated from high school or earned a general education development (“GED”) certificate;
  - (c) Has not been convicted of a felony or any other crime that has a direct bearing on the applicant’s ability to perform competently and fully as a licensee;
  - (d) Has been principally engaged in the performance of home inspections in Tennessee for at least two (2) years preceding the date of the application;
  - (e) Has completed at least one hundred fifty (150) home inspections for compensation;
  - (f) Has passed an examination approved by the commissioner;
  - (g) Has a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00); and
  - (h) Has a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. and these rules.
- (4) On or after December 28, 2006, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:
  - (a) Is at least eighteen (18) years of age;
  - (b) Has graduated from high school or earned a general education development (“GED”) certificate;
  - (c) Has not been convicted of a felony or any other crime that has a direct bearing on the applicant’s ability to perform competently and fully as a licensee;
  - (d) Has successfully completed ninety (90) hours of education approved by the commissioner in the performance of home inspections and the preparation of home inspection reports;

## RULEMAKING HEARINGS

- (e) Has passed an examination approved by the commissioner;
  - (f) Has a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00); and
  - (g) Has a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. and these rules.
- (5) Reciprocity. The commissioner may grant a license as a home inspector to a nonresident of this state who holds a like, unexpired license as a home inspector in the individual's resident state if the requirements for licensure in the applicant's resident state are at least equivalent to the requirements for licensure in Tennessee. Such applicant shall file with the commissioner the required application form and fee, along with proof that the applicant holds a current, valid license as a home inspector in such applicant's resident state.

**Authority:** *Chapter 65 of the Public Acts of 2005, §§ 4, 6 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-305 [effective July 1, 2006].*

### **0780-5-12-.05 RENEWAL REQUIREMENTS.**

- (1) A license issued to a home inspector pursuant to this chapter shall expire two (2) years from the date of its issuance and shall become invalid on such date unless renewed.
- (2) A home inspector may renew a current, valid license by submitting an application form approved by the commissioner, the required renewal fee, proof of having completed thirty-two (32) hours of commissioner-approved continuing education and any other information required for renewal, to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (3) A licensee seeking to renew a license within the thirty (30) days immediately prior to the expiration date of the license may renew the license by submitting any required documentation, the fee for renewal, and a late penalty of \$25.00.
- (4) A licensee who fails to pay the renewal fee, the applicable late penalty, or otherwise fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have sixty (60) days after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of \$25.00, submittal of proof of compliance with any other prerequisites to renewal, and payment of an additional late penalty of \$25.00 for each month or fraction of a month that renewal is late.
- (5) Any person seeking renewal of a license more than sixty (60) days after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure. In considering such reapplication, the commissioner has the discretion to:
  - (a) waive reexamination or additional education requirements beyond the examination and education presented at the time of initial licensure; or
  - (b) reinstate a license subject to the applicant's compliance with such reasonable conditions as the commissioner may prescribe, including payment of a penalty fee, in addition to the penalty fee provided in paragraph (4), of not more than twenty-five dollars (\$25.00) per month or portion thereof from the date the license expired.

RULEMAKING HEARINGS

- (6) A fee submitted by mail to the commissioner for purposes of renewal will be deemed to have been submitted on the date of the official postmark on such mail.

**Authority:** Chapter 65 of the Public Acts of 2005, §§ 4, 8 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-307[effective July 1, 2006].

**0780-5-12-.06 FEES.**

- (1) Nonrefundable application fee and initial license fee.....\$300.00
- (2) The examination fee will be set by the entity designated by the State to administer the examination.
- (3) Renewal fee.....\$200.00
- (4) The late renewal penalty fee is \$25.00 per month for each month or fraction of a month that renewal is late.

**Authority:** Chapter 65 of the Public Acts of 2005, §§ 4, 6, 8 and 12 and T.C.A. §§ 62-6-303(a)(5), (7) and 62-6-307 [effective July 1, 2006].

**0780-5-12-.07 QUALIFYING AND CONTINUING EDUCATION.**

- (1) Course approval requirements.
  - (a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit to the commissioner any documents, statements and forms as the commissioner may require. The complete application shall be submitted to the commissioner no later than thirty (30) days prior to the scheduled date of the course. At a minimum, a person or entity seeking approval to conduct a course for qualifying or continuing education shall provide:
    - 1. Name and address of the provider;
    - 2. Contact person and his or her address, telephone number, fax number and email address;
    - 3. The location of the courses or programs;
    - 4. The number and type of education credit hours requested for each course;
    - 5. Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;
    - 6. If a prior approved course has substantially changed, a summarization of the changes; and
    - 7. The names and qualifications of each instructor who is qualified in accordance with paragraph (2) of this rule.
  - (b) Acceptable topics include, but are not limited to:

## RULEMAKING HEARINGS

1. Observing and identifying defects in structural components, foundations, roof coverings;
  2. Insulation and ventilation;
  3. Exterior and interior components;
  4. Plumbing, heating, cooling and electrical systems;
  5. Applicable state laws and rules;
  6. Business management.
- (c) In addition to accepting courses approved as described in this rule, qualifying and continuing education credits may be granted to an applicant or licensee if the applicant or licensee provides documentation acceptable to the commissioner that shows that the courses meet applicable requirements for the category of credit applied for, including proof that the applicant or licensee attended and successfully completed the course.
- (d) The commissioner may withhold or withdraw approval of any provider for violation of or failure to comply with any provision of this rule. Such withholding or withdrawal does not constitute a contested case proceeding pursuant to the Uniform Administrative Procedures Act compiled at T.C.A. Title 4, Chapter 5.
- (e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the commissioner. Such person or entity may indicate that the commissioner has approved a course of study if that course of study has been pre-approved by the commissioner before it is advertised or held.
- (f) Within five (5) working days after the completion of each course, the provider shall submit to the commissioner a list of all attendees, including, if applicable, the attendees' license numbers, who completed the course on the course completion form approved by the commissioner. If the course is for continuing education, each licensee successfully completing the course shall be furnished a certificate certifying completion.
- (g) Providers shall maintain course records for at least five (5) years. The commissioner may at any time examine such records to ensure compliance with this rule.
- (2) Instructor qualifications and requirements. A person seeking approval as an instructor shall submit an application on a form approved by the commissioner. If granted, the approval as an instructor shall be valid for a period of two (2) years from the date of the approval.
- (a) An instructor shall have one of the following qualifications:
1. Three (3) years of recent experience in the subject matter being taught; or
  2. A minimum of an associates degree in the subject area being taught; or
  3. Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught.

## RULEMAKING HEARINGS

4. Other educational, teaching or professional qualifications determined by the commissioner which constitute an equivalent to (1) or more of the qualifications in parts (2)(a)1., 2., and 3. of this rule.
  - (b) In order to maintain approved status, an instructor shall furnish evidence on a form approved by the commissioner that the instructor has taught a commissioner-approved course, or any other course for qualifying or continuing education credit that the commissioner determines to be equivalent, within the preceding two (2) year period. Any instructor who does not meet their requirements of this subparagraph (2)(b) shall be required to submit a new application in accordance with subparagraph (2)(a) above.
- (3) In order to renew a license, and in addition to any other renewal requirements, the licensee shall submit to the commissioner a log, on a form provided by the commissioner, showing the type(s) of continuing education activity claimed, provider, location, duration, instructor's or speaker's name, description of the activity and continuing education units earned, along with the completion certificate(s) furnished by the provider. A licensee shall submit the log and the completion certificate(s) to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (4) If a licensee who is not a resident of Tennessee satisfies a continuing education requirement for renewal of a license as a home inspector in the licensee's resident state, the licensee will be deemed to have met the continuing education requirement for Tennessee; provided, the continuing education requirements in the licensee's resident state are at least equivalent to the continuing education requirements in Tennessee. In order for the licensee to be deemed to have met the requirement, the licensee must file with the license renewal a certificate from the licensee's resident state certifying that the licensee has completed the continuing education requirement for licensure in that state. The certificate from the licensee's resident state verifying compliance with continuing education in the resident state must be received by the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.

**Authority:** Chapter 65 of the Public Acts of 2005, §§ 4, 8 and 12 and T.C.A. §§ 62-6-303(a)(4), (5) and 62-6-307 [effective July 1, 2006].

### 0780-5-12-.08 CITATIONS.

- (1) The commissioner may issue citations against persons acting in the capacity of or engaging in the business of a home inspector without a license in violation of T.C.A. § 62-6-304. Each citation shall be in writing and describe with particularity the basis of the citation. Each citation shall contain an order to cease all violations of the applicable law, and an assessment of a civil penalty in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-6-304	\$50 - \$1000
(b) In determining the amount of any penalty to be assessed pursuant to this rule, the commissioner may consider such factors as the following:	
1. Whether the amount imposed will be a substantial economic deterrent to the violator;	



## RULEMAKING HEARINGS

2. The circumstances leading to the violation;
3. The severity of the violation and the risk of harm to the public;
4. The economic benefits gained by the violator as a result of noncompliance;
5. The interest of the public;
6. Willfulness of the violation.

**Authority:** Chapter 65 of the Public Acts of 2005, §§ 4, 8 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-308(b) [effective July 1, 2006].

### 0780-5-12-.09 CIVIL PENALTIES.

- (1) With respect to any licensed home inspector, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee for each separate violation of a statute, rule or commissioner's order pertaining to home inspectors, in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-6-308	\$50 - \$1000
(b) Rule 0780-5-12-.10	\$50 - \$1000
(c) Commissioner's order	\$50 - \$1000

- (2) With respect to any person required to be licensed in this state as a home inspector, the commissioner may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-6-304	\$50 - \$1000

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any penalty to be assessed pursuant to this rule, the commissioner may consider such factors as the following:
  - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) The circumstances leading to the violation;
  - (c) The severity of the violation and the risk of harm to the public;
  - (d) The economic benefits gained by the violator as a result of noncompliance;
  - (e) The interest of the public;
  - (f) Willfulness of the violation.

## RULEMAKING HEARINGS

**Authority:** Chapter 65 of the Public Acts of 2005, §§ 4, 5 and 12 and T.C.A. §§ 56-1-308, 62-6-303(a)(5) and 62-6-308 [effective July 1, 2006].

### **0780-5-12-.10 STANDARDS OF PRACTICE.**

- (1) Standards of Practice. This rule sets forth the minimum standards of practice required of licensed home inspectors.
- (2) Definitions. The following definitions apply to this rule:
  - (a) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions;
  - (b) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet;
  - (c) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component;
  - (d) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system;
  - (e) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination;
  - (f) "Dangerous or adverse situations" means situations that pose a threat of injury to the home inspector, or those situations that require the use of special protective clothing or safety equipment;
  - (g) "Describe" means report in writing a system or component by its type, or other inspected characteristics, to distinguish it from other systems or components used for the same purpose;
  - (h) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance;
  - (i) "Enter" means to go into an area to inspect all visible components;
  - (j) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously;
  - (k) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously;
  - (l) "Inspect" means the act of making a visual examination;
  - (m) "Installed" means attached or connected such that an item requires tools for removal;

## RULEMAKING HEARINGS

- (n) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch;
- (o) "On-site water supply quality" means water quality is based on the bacterial, chemical, mineral, and solids content of the water;
- (p) "On-site water supply quantity" means the rate of flow of on-site well water;
- (q) "Operate" means to cause systems or equipment to function;
- (r) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening;
- (s) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components;
- (t) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight;
- (u) "Representative number" means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building;
- (v) "Roof drainage systems" means gutters, downspouts, leaders, splashblocks, and similar components used to carry water off a roof and away from a building;
- (w) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the home inspector is not required to reestablish the circuit for the purpose of operating the equipment or system;
- (x) "Significantly deficient" means unsafe or not functioning;
- (y) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices;
- (z) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads);
- (aa) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions;
- (bb) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations
- (cc) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

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### (3) Purpose and Scope.

- (a) Home inspections performed according to this rule shall provide the client with an understanding of the property conditions at the time of the home inspection.
- (b) Home inspectors shall:
  - 1. Provide a written contract, signed by the client or the client's legal representative that shall:
    - (i) State that the home inspection will be in accordance with the Standards of Practice promulgated by the commissioner;
    - (ii) Describe what services shall be provided and their cost;
    - (iii) State that the home inspection report will not address the items set forth in parts (5)(a)4. and 5. of this rule; and
    - (iv) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components.
  - 2. Inspect readily visible and readily accessible installed systems and components listed in this rule; and
  - 3. Submit a written report to the client that shall at a minimum:
    - (i) Describe those systems and components required to be described in paragraphs (7) through (16) of this rule;
    - (ii) State which systems and components designated for inspection in this rule have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
    - (iii) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
    - (iv) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a specialist; and
    - (v) State the name, license number, and signature of the person conducting the inspection.
- (c) This rule does not limit home inspectors from:
  - 1. Reporting observations and conditions or rendering opinions of items in addition to those required in paragraphs (7) through (16) of this rule; or
  - 2. Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

### (4) General Limitations.

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- (a) This rule applies to structures that are intended to be or are in fact used as residences, consisting of from one to four (1-4) family dwelling units and their attached garages or car-ports.
- (5) Required Reporting.
- (a) The home inspection report shall include the following:
    - 1. A report on any system or component inspected that, in the opinion of the home inspector, is significantly deficient;
    - 2. A list of any systems or components that were designated for inspection in this rule but that were not inspected;
    - 3. The reason a system or component listed in accordance with part (5)(a)2. was not inspected;
    - 4. A statement that the report does not address environmental hazards, including:
      - (i) Lead-based paint;
      - (ii) Radon;
      - (iii) Asbestos;
      - (iv) Cockroaches;
      - (v) Rodents;
      - (vi) Pesticides;
      - (vii) Treated lumber;
      - (viii) Fungus;
      - (ix) Mercury;
      - (x) Carbon monoxide; or
      - (xi) Other similar environmental hazards.
    - 5. A statement that the report does not address subterranean systems or system components (operational or nonoperational), including:
      - (i) Sewage disposal;
      - (ii) Water supply; or
      - (iii) Fuel storage or delivery.
- (6) General Exclusions.
- (a) Home inspectors are not required to report on:

## RULEMAKING HEARINGS

1. Life expectancy of any component or system;
  2. The cause(s) of the need for a repair;
  3. The methods, materials, and costs of corrections;
  4. The suitability of the property for any specialized use;
  5. Compliance or non-compliance with adopted codes, ordinances, statutes, regulatory requirements or restrictions;
  6. The market value of the property or its marketability;
  7. The advisability or inadvisability of purchase of the property;
  8. Any component or system that was not inspected;
  9. The presence or absence of pests such as wood damaging organisms, rodents, or insects; or
  10. Cosmetic damage, underground items, or items not permanently installed.
- (b) Home inspectors are not required to:
1. Offer warranties or guarantees of any kind;
  2. Calculate the strength, adequacy, or efficiency of any system or component;
  3. Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health or safety of the home inspector or other persons;
  4. Operate any system or component that is shut down or otherwise inoperable;
  5. Operate any system or component that does not respond to normal operating controls;
  6. Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
  7. Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
  8. Predict future condition, including but not limited to failure of components;
  9. Project operating costs of components;
  10. Evaluate acoustical characteristics of any system or component; or
  11. Inspect special equipment or accessories that are not listed as components to be inspected in this rule.
- (c) Home inspectors shall not:

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1. Offer or perform any act or service contrary to law; or
2. Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring a license in this state for the same client unless the client is advised thereof and consents thereto.

### (7) Heating Systems.

#### (a) The home inspector shall inspect permanently installed heating systems including:

1. Heating equipment;
2. Normal operating controls;
3. Automatic safety controls;
4. Chimneys, flues, and vents, where readily visible;
5. Solid fuel heating devices;
6. Heat distribution systems including fans, pumps, ducts and piping, insulation, air filters, registers, radiators, fan coil units, convectors; and
7. The presence of an installed heat source in each room.

#### (b) The home inspector shall describe:

1. The energy source for the system; and
2. The heating equipment and distribution type.

#### (c) The home inspector shall operate the systems using normal operating controls.

#### (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

#### (e) The home inspector is not required to:

1. Operate heating systems when weather conditions or other circumstances may cause equipment damage;
2. Operate automatic safety controls;
3. Ignite or extinguish solid fuel fires; or
4. Inspect:
  - (i) The interior of flues;
  - (ii) Fireplace insert flue connections;
  - (iii) Humidifiers;

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- (iv) Electronic air filters; or
- (v) The uniformity or adequacy of heat supply to the various rooms.

### (8) Cooling Systems.

#### (a) The home inspector shall inspect:

1. Central air conditioning and through-the-wall installed cooling systems including:
  - (i) Cooling and air handling equipment; and
  - (ii) Normal operating controls.
2. Distribution systems including:
  - (i) Fans, pumps, ducts and piping, dampers, insulation, air filters, registers, fan-coil units; and
  - (ii) The presence of an installed cooling source in each room.

#### (b) The home inspector shall describe:

1. The energy source for the system; and
2. The cooling equipment type.

#### (c) The home inspector shall operate the systems using normal operating controls.

#### (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

#### (e) The home inspector is not required to:

1. Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
2. Inspect window air conditioners; or
3. Inspect the uniformity or adequacy of cool-air supply to the various rooms.

### (9) Electrical Systems.

#### (a) The home inspector shall inspect:

1. Service entrance conductors;
2. Service equipment, grounding equipment, main overcurrent device, and main and distribution panels;
3. Amperage and voltage ratings of the service;



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4. Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages;
  5. The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
  6. The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
  7. The operation of ground fault circuit interrupters; and
  8. Smoke detectors.
- (b) The home inspector shall describe:
1. Service amperage and voltage;
  2. Service entry conductor materials;
  3. The service type as being overhead or underground; and
  4. The location of main and distribution panels.
- (c) The home inspector shall report the presence of any readily accessible single strand aluminum branch circuit wiring.
- (d) The home inspector shall report on the presence or absence of smoke detectors, and operate their test function, if accessible.
- (e) The home inspector is not required to:
1. Insert any tool, probe, or testing device inside the panels;
  2. Test or operate any overcurrent device except ground fault circuit interrupters;
  3. Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or
  4. Inspect:
    - (i) Low voltage systems;
    - (ii) Security system devices, heat detectors, or carbon monoxide detectors;
    - (iii) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system; or
    - (iv) Built-in vacuum equipment.
- (10) Plumbing Systems.

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- (a) The home inspector shall inspect:
  - 1. Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;
  - 2. Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
  - 3. Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents; and
  - 4. Sump pumps.
- (b) The home inspector shall describe:
  - 1. Water supply and distribution piping materials;
  - 2. Drain, waste, and vent piping materials;
  - 3. Water heating equipment; and
  - 4. The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.
- (d) The home inspector is not required to:
  - 1. State the effectiveness of anti-siphon devices;
  - 2. Determine whether water supply and waste disposal systems are public or private;
  - 3. Operate automatic safety controls;
  - 4. Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
  - 5. Inspect:
    - (i) Water conditioning systems;
    - (ii) Fire and lawn sprinkler systems;
    - (iii) On-site water supply quantity and quality;
    - (iv) On-site waste disposal systems;
    - (v) Foundation irrigation systems;
    - (vi) Bathroom spas, except as to functional flow and functional drainage;
    - (vii) Swimming pools;

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(viii) Solar water heating equipment; or

6. Inspect the system for proper sizing, design, or use of proper materials.

### (11) Structural Components and Foundations.

(a) The home inspector shall inspect structural components including:

1. Foundation;
2. Floors;
3. Walls;
4. Columns or piers;
5. Ceilings; and
6. Roofs.

(b) The home inspector shall describe the type of:

1. Foundation;
2. Floor structure;
3. Wall structure;
4. Columns or piers;
5. Ceiling structure; and
6. Roof structure.

(c) The home inspector shall:

1. Probe structural components where deterioration is suspected;
2. Enter underfloor crawl spaces, basements, and attic spaces except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;
3. Report the methods used to inspect underfloor crawl spaces and attics; and
4. Report signs of water penetration into the building or signs of condensation on building components.

### (12) Roof Coverings.

(a) The home inspector shall inspect:

1. Roof coverings;

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2. Roof drainage systems;
  3. Flashings;
  4. Skylights, chimneys, and roof penetrations; and
  5. Signs of leaks or abnormal condensation on building components.
- (b) The home inspector shall:
1. Describe the type of roof covering materials; and
  2. Report the methods used to inspect the roofing.
- (c) The home inspector is not required to:
1. Walk on the roofing; or
  2. Inspect attached accessories including solar systems, antennae, and lightning arrestors.
- (13) Exterior Components.
- (a) The home inspector shall inspect:
1. Wall cladding, flashings, and trim;
  2. Entryway doors and a representative number of windows;
  3. Garage door operators;
  4. Decks, balconies, stoops, steps, areaways, porches and applicable railings;
  5. Eaves, soffits, and fascias; and
  6. Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.
- (b) The home inspector shall:
1. Describe wall cladding materials;
  2. Operate all entryway doors and a representative number of windows;
  3. Operate garage doors manually or by using permanently installed controls for any garage door operator;
  4. Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and
  5. Probe exterior wood components where deterioration is suspected.
- (c) The home inspector is not required to inspect:

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1. Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
2. Fences;
3. For the presence of safety glazing in doors and windows;
4. Garage door operator remote control transmitters;
5. Geological conditions;
6. Soil conditions;
7. Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities), except as otherwise provided in this rule;
8. Detached buildings or structures; or
9. For the presence or condition of buried fuel storage tanks.

### (14) Interior Components.

#### (a) The home inspector shall inspect:

1. Walls, ceiling, and floors;
2. Steps, stairways, balconies, and railings;
3. Counters and a representative number of built-in cabinets; and
4. A representative number of doors and windows.

#### (b) The home inspector shall:

1. Operate a representative number of windows and interior doors; and
2. Report signs of water penetration into the building or signs of condensation on building components.

#### (c) The home inspector is not required to inspect:

1. Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
2. Carpeting; or
3. Draperies, blinds, or other window treatments.

### (15) Insulation and Ventilation.

#### (a) The home inspector shall inspect:

## RULEMAKING HEARINGS

1. Insulation and vapor retarders in unfinished spaces;
  2. Ventilation of attics and foundation areas;
  3. Kitchen, bathroom, and laundry venting systems; and
  4. The operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.
- (b) The home inspector shall describe:
1. Insulation in unfinished spaces; and
  2. The absence of insulation in unfinished space at conditioned surfaces.
- (c) The home inspector is not required to report on:
1. Concealed insulation and vapor retarders; or
  2. Venting equipment that is integral with household appliances.
- (16) Built-In Kitchen Appliances.
- (a) The home inspector shall inspect and operate the basic functions of the following kitchen appliances:
1. Permanently installed, dishwasher(s) through a normal cycle;
  2. Range(s), cook top(s), and permanently installed oven(s);
  3. Trash compactor(s);
  4. Garbage disposal(s);
  5. Ventilation equipment or range hood(s); and
  6. Permanently installed microwave oven(s).
- (b) The home inspector is not required to inspect:
1. Clocks, timers, self-cleaning oven functions, or thermostats for calibration or automatic operation;
  2. Non built-in appliances; or
  3. Refrigeration units.
- (c) The home inspector is not required to operate:
1. Appliances in use; or

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2. Any appliance that is shut down or otherwise inoperable.

**Authority:** *Chapter 65 of the Public Acts of 2005, §§ 4 and 12 and T.C.A. § 62-6-303(a)(5), (6) [effective July 1, 2006].*

### **0780-5-12-.11 CODE OF ETHICS.**

- (1) Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.
- (2) Opinions expressed by licensees shall only be based on their education, experience, and honest convictions.
- (3) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative.
- (4) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (5) No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.
- (6) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.
- (7) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.
- (8) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

**Authority:** *Chapter 65 of the Public Acts of 2005, §§ 4 and 12 and T.C.A. § 62-6-303(a)(5), (6) [effective July 1, 2006].*

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 31st day of January, 2006. (01-37)

## RULEMAKING HEARINGS

### BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules, new rules, and repeal of a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 21st day of March, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

### SUBSTANCE OF PROPOSED RULES

#### AMENDMENTS

Rule 0460-1-.01, Definitions, is amended by deleting paragraphs (19) and (22) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (19) and (22) shall read:

- (19) Practical Dental Assistant - An auxiliary employee of a licensed dentist(s) who performs supportive chairside procedures under the direct supervision and full responsibility of that licensed dentist or who is a dental assistant student in an educational institution accredited by the Commission on Dental Accreditation of the American Dental Association, as defined by Rule 0460-4-.01.
- (22) Registered Dental Assistant - An auxiliary employee of a licensed dentist(s) who has been issued a registration to practice intraoral dental assisting procedures in accordance with the statutes and rules of the Board, and is eligible to seek certification and training in advanced dental assisting areas, and who practices under the direct supervision and full responsibility of a licensed dentist.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.



## RULEMAKING HEARINGS

Rule 0460-1-.02, Fees, is amended by adding the following language as new subparagraphs (2) (j), (3) (i), (3) (j), (3) (k), and (3) (l):

- |         |   |          |
|---------|---|----------|
| (2) (j) | Administration of Local Anesthesia Certification Fee – Payable each time an application for certification is filed. | \$ 50.00 |
| (3) (i) | Radiology Certification Fee – To be paid to the Board’s Administrative Office                                       | \$ 15.00 |
| (3) (j) | Nitrous Oxide Monitoring Certification Fee – To be paid to the Board’s Administrative Office                        | \$ 15.00 |
| (3) (k) | Expanded Restorative Functions Certification Fee – To be paid to the Board’s Administrative Office                  | \$ 15.00 |
| (3) (l) | Expanded Prosthetic Functions Certification Fee – To be paid to the Board’s Administrative Office                   | \$ 15.00 |

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, and 63-5-108.

Rule 0460-1-.02, Fees, is amended by deleting subparagraph (3) (b) in its entirety and renumbering the remaining subparagraphs accordingly:

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-111.

Rule 0460-1-.14, Mobile Dental Clinics, is amended by inserting the following language as new paragraph (4), and renumbering the remaining paragraphs accordingly:

- (4) School-based prevention programs whose mobile dental clinics provide only dental screenings, oral health education, oral evaluations, topical fluoride, and sealant application are not required to have the equipment listed in subparagraphs (3) (c), (3) (e) and (3) (f) of this rule.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, and 63-5-108.

Rule 0460-3-.09, Scope of Practice, is amended by deleting subparagraph (1) (u) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting subparagraph (6) (h) in its entirety and substituting instead the following language, and is further amended by inserting the following language as new subparagraph (6) (i) and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraphs (6) (h) and (6) (i) shall read:

- (6) (h) Administration of conscious sedation or general anesthesia.
- (6) (i) Administration of local anesthesia on patients without certification as provided in Rule 0460-3-.12.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

Rule 0460-3-.09, Scope of Practice, is amended by inserting the following language as new paragraph (5) and renumbering the remaining paragraphs accordingly:

- (5) Administration of local anesthesia must be under the direct supervision of a licensed dentist who, at that time, is physically present at the same office location. The licensed dental hygienist must possess certification pursuant to Rule 0460-3-.12.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

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Rule 0460-3-.10, Restorative and Prosthetic Certifications, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read

- (1) Dental hygienists who have a minimum of two (2) years continuous full-time employment within the past three (3) years in a dental practice as a licensed dental hygienist are eligible for admission to Board-approved certification courses in restorative and/or prosthetic functions. A licensed dental hygienist must complete a Board-approved certification course in restorative or prosthetic functions and obtain the appropriate certification, issued by the Board, before he/she can perform restorative or prosthetic functions on any patient.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

Rule 0460-4-.01, Levels of Practice, is amended by deleting part (1) (b) 2., subparagraph (2) (b), and paragraph (3) in their entirety and substituting instead the following language, so that as amended, the new part (1) (b) 2., subparagraph (2) (b), and paragraph (3) shall read:

- (1) (b) 2. It is the intent of this rule that practical dental assistants not invade the practice procedures only allowed to be assigned or delegated to registered dental assistants or licensed dental hygienists.
- (2) (b) Scope of Practice - A registered dental assistant may perform those additional procedures for which they have received Board certification as provided by Rule 0460-4-.08 under the direct supervision of a dentist.
- (3) Dental assistants actively enrolled in a Board approved program or a program accredited by the Commission on Dental Accreditation of the American Dental Association may concurrently be allowed to perform procedures under the direct supervision of a dentist, otherwise lawfully permitted to be performed by registered dental assistants under the direct supervision of a dentist, for the purpose of obtaining the clinical experience necessary to complete such program.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-108.

Rule 0460-4-.02, Registration Process, is amended by deleting paragraphs (8) and (9) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (8) and (9) shall read:

- (8) An applicant must submit or cause to be submitted, documentation necessary to show proof of current Cardio Pulmonary Resuscitation (CPR) certification.
- (9) Application review and registration decisions required by this rule shall be governed by rule 0460-1-.04.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-108.

Rule 0460-4-.04, Coronal Polishing Certification, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by inserting the following language as paragraph (5) and renumbering the present paragraphs (5) and (6) as paragraphs (6) and (7), so that as amended, the new paragraphs (2) and (5) shall read:

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- (2) Qualifications – To be considered for issuance of a coronal polishing certification, an applicant must have been employed as a full time dental assistant for a minimum of one (1) year prior to applying for admission to an education course in coronal polishing and has registered as a dental assistant in Tennessee, or be a current certified dental assistant, as defined in Rule 0460-1-.01, who has one (1) year of clinical experience in another state and who is currently a Tennessee registered dental assistant. The sequence of the certification process is as follows:
  - (a) An applicant must apply for and successfully complete an educational course, as provided in this rule, as a prerequisite for admission to the examination; or
  - (b) An applicant who has successfully completed a coronal polishing course in another state which was approved by the board in the other state, which the Board consultant has determined as equivalent to the Board-approved course in Tennessee, is eligible to apply directly to the Board for admission to the examination. If a certification or permit was issued by the other state, verification of the certificate or permit must be received directly from the other board. The information regarding content of the course and proof of completion must be sent directly from the course provider to the Board's administrative office.
  - (c) After successful completion of the educational course or the course determined to be equivalent, an applicant must apply forty-five (45) days prior to the examination to be admitted to the examination as provided in this rule and submit proof of current certification in cardiopulmonary resuscitation.
  - (d) After successful completion of the examination, the Board Administrative Office will award an applicant a coronal polishing certificate.
- (5) Registered Dental Assistants, who have also successfully completed a comparable assistant training program in another state in coronal polishing, are eligible to apply directly to the Board for coronal polishing certification without additional training.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-111, and 63-5-115.

Rule 0460-4-.05, Nitrous Oxide Certification, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by inserting the following language as new paragraph (3) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) To be eligible for certification, the registered dental assistant must successfully complete a Board-approved nitrous oxide monitoring certification course, or have successfully completed a comparable training course in another state, or be currently enrolled in an ADA-accredited or Board-approved program which offers this course as part of their curriculum. Once eligible for certification, the registered dental assistant shall not monitor nitrous oxide until certification has been issued by the Board.
- (3) If the registered dental assistant completed a nitrous oxide monitoring course in another state which was approved by the board in the other state, the Board consultant may determine if the course is equivalent to the Board-approved course in Tennessee. The information regarding content of the course and proof of completion must be sent directly from the course provider to the Board's administrative office. If a certification or permit was issued by the other state, verification of the

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certificate or permit must be received directly from the other board. Once eligible for certification, the registered dental assistant shall not monitor nitrous oxide until certification has been issued by the Board.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

Rule 0460-4-.08, Scope of Practice, is amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (2) (d) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (2) (e) and (2) (f), and is further amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (3) (a) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (p) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting paragraph (4) but not its subparagraphs, and is further amended by adding the following language as new subparagraphs (4) (n) and (4) (o), so that as amended, the new paragraph (1) but not its subparagraphs, the new subparagraphs (2) (d), (2) (e) and (2) (f), the new paragraph (3) but not its subparagraphs, the new subparagraph (3) (a), the new paragraph (4) but not its subparagraphs, and the new subparagraphs (4) (n) and (4) (o) shall read:

- (1) A lawfully licensed and duly registered dentist may delegate to dental assistants those procedures for which they have received adequate training and for which the dentist exercises direct supervision and full responsibility, except as follows:
  - (2) (d) Performance of expanded restorative functions, pursuant to Rule 0460-4-.10.
  - (2) (e) Performance of expanded prosthetic functions, pursuant to Rule 0460-4-.10.
  - (2) (f) Exposure of dental radiographs, pursuant to Rule 0460-4-.11.
- (3) Delegable or Assignable Procedures - In addition to those duties of the registered dental assistant which are commonly recognizable by the dental profession for safe performance, pursuant to T.C.A. § 63-5-108 a dental assistant may perform the following duties which are assigned or delegated to the dental assistant by the employer dentist:
  - (3) (a) The processing of radiographs, including digital, of the mouth, gums, jaws, teeth or any portion thereof for dental diagnosis.
- (4) Prohibited Procedures—In addition to the duties defined as the practice of dentistry or dental hygiene by T.C.A. § 63-5-108, dental assistants are not permitted to perform the following:
  - (4) (n) The exposure of radiographs without certification as provided by Rule 0460-4-.11 and Rule 0460-4-.08 (2).
  - (4) (o) Expanded restorative or prosthetic functions without certification as provided by Rule 0460-4-.10 and Rule 0460-4-.08 (2).

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

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Rule 0460-4-.09, Sealant Application Certification, is amended by deleting subparagraphs (2) (b) and (2) (c) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (b) and (2) (c) shall read:

- (2) (b) Individuals enrolled in either an ADA-accredited or Board-approved dental assisting program, which has elected to include in its curriculum the Board-approved sealant application certification course, will be qualified to perform the application of sealants upon issuance of the certification. All such programs shall adhere to the requirements of Rule 0460-5-.03 (3).
- (2) (c) Registered dental assistants who have successfully completed a comparable assistant training program in another state in the application of sealants are eligible to apply directly to the Board of Dentistry for a sealant application certificate without additional training, provided the course is determined by the Board consultant to be equivalent to the Board-approved course in Tennessee. The information regarding content of the course and proof of completion must be sent directly from the course provider to the Board's administrative office. If a certification or permit was issued by the other state, verification of the certificate or permit must be received directly from the other board.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

Rule 0460-4-.10, Restorative and Prosthetic Certifications, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (5) but not its subparagraphs and substituting instead the following language, and is further amended by adding the following language as paragraph (6), so that as amended, the new paragraph (1), the new paragraph (5) but not its subparagraphs, and the new paragraph (6) shall read:

- (1) Dental assistants who have a minimum of two (2) years continuous full-time employment within the past three (3) years in a dental practice as a dental assistant are eligible for admission to a Board-approved certification course in restorative and/or prosthetic functions. A registered dental assistant must apply for and complete a Board-approved certification course in restorative or prosthetic functions and obtain the appropriate certification, issued by the Board, before he/she can perform expanded restorative or prosthetic functions on any patient.
- (5) Prohibited Procedures – The following procedures are prohibited for all dental assistants, including those who have certification in restorative or prosthetic functions:
- (6) Registered dental assistants, who have also successfully completed a comparable assistant training program in another state in expanded prosthetic or restorative functions, are eligible to apply directly to the Board for an expanded functions certificate without additional training.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

Rule 0460-5-.02, Schools, Programs and Courses for the Dental Hygienist, is amended by deleting parts (3) (c) 1. and (4) (c) 1. in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new parts (3) (c) 1. and

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(4) (c) 1., and the new paragraph (5) shall read:

(3) (c) 1. The certification course shall admit only those dental hygienists who are currently licensed, pursuant to Rule 0460-3-.01, .02, or .03, and who submit proof of a minimum of two (2) years continuous full-time employment within the past three (3) years in a dental practice as a dental hygienist.

(4) (c) 1. The certification course shall admit only those dental hygienists who are currently licensed, pursuant to Rule 0460-3-.01, .02, or .03, and who submit proof of a minimum of two (2) years continuous full-time employment within the past three (3) years in a dental practice as a dental hygienist.

(5) Certification Course in Administration of Local Anesthesia

(a) Application for Board Approval – The director of a certification course in administration of local anesthesia shall make application for approval to operate that course of study on forms to be provided by the Board. The completed application must be received in the Board's Office at least thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The director of the certification course will be notified in writing of the Board's action(s).

(b) Exemption from Board Approval – Dental hygiene programs accredited by the American Dental Association (ADA) Commission on Dental Accreditation which teach administration of local anesthesia to the level of clinical competency to the students enrolled in the associate, bachelor, or master degree program are exempt from obtaining Board approval.

1. Students who complete a course taught within their associate, bachelor, or master degree program shall have the program send an original letter on school letterhead signed by the program director attesting to successful completion of the course to the level of clinical competency.

2. Students shall submit the certification application and fee.

3. The certification will not be issued until the required information is received and the dental hygiene license has been issued.

(c) Retention of Approval.

1. The certification course must be taught at an educational institution as defined in part (5) (d) 2. of this rule and shall maintain strict compliance with all minimum standards for admissions, facilities, instructor(s), equipment, and curriculum as set forth in this rule, as amended/may be amended, in order to obtain and/or retain Board approval.

2. The certification course shall be subject to on-site inspections by representatives of the Board and/or required to complete such paper surveys, as requested.

3. The Board shall be notified immediately of any changes made in the operation of the certification course, such as change of location, directorship, and/or instructors. A new certificate of approval will be issued in the event of change in directorship of the course.

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4. Certificates of approval shall be issued for two (2) years and shall expire on December 31st every two (2) years.
- (d) Minimum Standards for Admissions, Facilities, Instructor(s), Equipment, and Curriculum.
1. The certification course shall admit only those dental hygienists who are currently licensed, pursuant to Rule 0460-3-.01, .02, or .03.
  2. The certification course shall be taught at an educational institution accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.
  3. The certification course may only be taught by:
    - (i) Tennessee licensed dentists who are faculty members at an accredited school of dentistry or dental hygiene and who have experience teaching the administration of local anesthesia; or
    - (ii) Tennessee licensed dental hygienists with certification in the administration of local anesthesia who are faculty members at an accredited school of dentistry or dental hygiene and who have experience teaching the administration of local anesthesia. Such dental hygienist instructors may only teach the certification course while under the direct supervision of a qualified instructor-dentist.
  4. The clinical instructor-to-student ratio must be one (1) instructor to six (6) students (1:6).
  5. The certification course shall consist of a didactic section of twenty-four (24) hours and a clinical section of no less than eight (8) hours for a total of at least thirty-two (32) hours of study in administration of local anesthesia.
    - (i) Each student must pass a competency examination on the material covered in the didactic section before continuing to the clinical section of the course. Students who do not pass the competency examination may be offered remediation before the start of the clinical experience.
    - (ii) Passage of a clinical competency examination, including satisfactorily performing injections.
    - (iii) Upon successful completion of the course, the certification application and fee must be submitted by the student.
    - (iv) The director/instructor of the certification course shall, within ten (10) days after course completion submit a letter, on school letterhead, for each student which attests to the student's successful completion of the course and the student's examination grade. The completed forms shall be submitted directly to the Board's Administrative Office by the director/instructor.
    - (v) The student will be issued a temporary local anesthesia certification to complete a ninety (90) day extern in the office of the employer dentist(s). During the extern the following injections must be successfully completed:

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- (I) Minimum of fifteen (15) inferior alveolar blocks:
  - (II) Minimum of fifteen (15) posterior superior alveolar;
  - (III) Minimum of two (2) each of the following:
    - I. Middle superior alveolar;
    - II. Anterior superior alveolar;
    - III. Nasopalatine;
    - IV. Greater palatine;
    - V. Long buccal;
    - VI. Mental block; and
    - VII. Lingual block.
  - (vi) The employer dentist(s) must submit, on a form provided by the board, proof of successful completion of the injections required by subpart (5) (d) 5. (v) of this rule.
  - (vii) Upon receipt of proof of successful completion of the injections, the certification for administration of local anesthesia will be issued.
  - (viii) Extensions of the ninety (90) day temporary permit will be considered on a case-by-case basis upon receipt of written documentation stating the reason an extension is requested. The board consultant has the authority to grant or deny the request.
6. The course syllabus must be approved by the Board and meet the following requirements:
- (i) Didactic Section - The didactic section shall be designed and conducted to provide the student with detailed knowledge of administration of local anesthesia, including didactic studies and clinical experience in the administration of posterior superior alveolar, middle superior alveolar, anterior superior alveolar, nasopalatine, greater palatine, long buccal, mental block, lingual block, inferior alveolar block and infiltration techniques, medical history and physical evaluation of the patient, and the prevention, diagnosis, and management of medical emergencies which can be encountered in the dental patient. The didactic section of the course shall include instruction in all of the following subject matters:
    - (I) Medical history evaluation procedures;
    - (II) Physical evaluation;
    - (III) Understanding pharmacology of local anesthesia and vasoconstrictors;



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- (IV) Anatomy of head, neck and oral cavity as it relates to administering local anesthetic agents;
- (V) Indications and contraindications for administration of local anesthesia;
- (VI) Selection and preparation of the armamentaria and record keeping for administering various local anesthetic agents;
- (VII) Medical and legal management complications;
- (VIII) Recognition and management of post-injection complications and management of reactions to injections;
- (IX) Proper infection control techniques with regard to local anesthesia and proper disposal of sharps;
- (X) Methods of administering local anesthetic agents with emphasis on:
  - I. Technique;
  - II. Aspiration;
  - III. Slow injection; and
  - IV. Minimum effective dosage;
- (XI) Medical emergency, prevention, diagnosis, and management;
- (XII) Instruction in the philosophy and psychology of the use of local anesthesia;
- (XIII) A review of the physiology of nerve conduction;
- (XIV) A review of regional anatomy;
- (XV) A survey of local anesthetic agents on nerve conduction;
- (XVI) A review of the metabolism and excretion of local anesthetics;
- (XVII) Instruction on toxicity of local anesthetic drugs;
- (XVIII) Instruction on the clinical manifestations of toxic reactions;
- (XIX) Instruction on the treatment of toxic reactions;
- (XX) Instruction on allergic reactions to local anesthetic drugs;
- (XXI) Instruction on the clinical manifestations of allergic reactions;
- (XXII) Instruction on the treatment of allergic reactions to local anesthetics;

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- (XXIII) Instruction regarding vasoconstrictor drugs used in local anesthetics;
  - (XXIV) Instruction on the clinical manifestations of toxic reactions to vasoconstrictor drugs used in local anesthesia;
  - (XXV) Instruction on the treatment of toxic reactions to vasoconstrictors used in local anesthesia;
  - (XXVI) Instruction on drug interactions related to local anesthesia;
  - (XXVII) Re-injecting when necessary; and
  - (XXVIII) Estimating the highest safe dosage of local anesthesia based upon the weight and/or age of the patient.
- (ii) Clinical Section - The clinical section must be provided under the supervision of qualified faculty, and the students must be evaluated for competency. The clinical section of the course shall include instruction in all of the following subject matters:
- (I) Evaluation the patient's health status;
  - (II) Taking the patient's vital signs;
  - (III) Administering local anesthetic infiltrations;
  - (IV) Administering local anesthetic nerve blocks; and
  - (V) Monitoring the patient's physical status while under the effects of local anesthetics.
- (e) The instructor shall provide a copy of the syllabus to the student before or at the beginning of each course, setting forth the materials to be presented in the course and the evaluation criteria to be utilized by the clinical instructor to determine successful completion of the certification course.
- (f) The passing grade on each competency examination is set at seventy-five per cent (75%). If the student initially fails any competency examination, the exam may be taken no more than one (1) additional time before the entire course must be retaken and the exam retaken. The examination shall be developed and administered by the course instructors in such a manner as to determine competency for the administration of local anesthesia.
- (g) The certification course shall not issue continuing education credit hours for the course, except to those individuals already certified to administer local anesthesia in Tennessee.
- (h) Failure to adhere to the rules governing the certification course or to provide access to inspection, pursuant to subparagraph (5) (c) of this rule, may subject the course provider and students to invalidation of the course results and withdrawal of course approval issued by the Board.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

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Rule 0460-5-.03, Schools, Programs, and Courses for the Registered Dental Assistant, is amended by deleting paragraph (5) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (5) (a) in its entirety and substituting instead the following language, and is further amended by deleting part (5) (c) 1. in its entirety and substituting instead the following language, and is further amended by deleting paragraph (6) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (6) (a) in its entirety and substituting instead the following language, and is further amended by deleting part (6) (c) 1. in its entirety and substituting instead the following language, and is further amended by adding the following language as paragraph (7), so that as amended the new paragraph (5) but not its subparagraphs, the new subparagraph (5) (a), the new part (5) (c) 1., the new paragraph (6) but not its subparagraphs, the new subparagraph (6) (a), the new part (6) (c) 1. and the new paragraph (7) shall read:

- (5) Certification Course in Expanded Restorative Functions
  - (5) (a) Application for Board Approval – The director of a certification course in expanded restorative functions shall make application for approval to operate that course of study on forms to be provided by the Board. The completed application must be received in the Board’s administrative office at least thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The director of the certification course will be notified in writing of the Board’s action(s).
  - (5) (c) 1. The certification course shall admit only those registered dental assistants who are currently licensed, pursuant to Rule 0460-4-.02, and who submit proof of a minimum of two (2) years continuous full-time employment within the past three (3) years in a dental practice as a registered dental assistant.
- (6) Certification Course in Expanded Prosthetic Functions
  - (6) (a) Application for Board Approval – The director of a certification course in expanded prosthetic functions shall make application for approval to operate that course of study on forms to be provided by the Board. The completed application must be received in the Board’s administrative office at least thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The director of the certification course will be notified in writing of the Board’s action(s).
  - (6) (c) 1. The certification course shall admit only those registered dental assistants who are currently licensed, pursuant to Rule 0460-4-.02, and who submit proof of a minimum of two (2) years continuous full-time employment within the past three (3) years in a dental practice as a registered dental assistant.
- (7) Certification Course in Dental Radiology
  - (a) Application of Rules – This section shall apply to both Tennessee ADA accredited and Board-approved dental assistant programs, as well as any other individual or entity which desires to establish such a certification course to admit and educate students who are currently registered dental assistants.
  - (b) Application for Board Approval – The owner and/or director of a certification course in dental radiology shall make application for approval to operate that course of study on forms to be provided by the Board. The completed application must be received in the Board's Office at least thirty (30) days prior to the next regularly scheduled Board meeting in order for the

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Board to review the application. The owner and/or director of the certification course will be notified in writing of the Board's action. This section shall also apply to all ADA accredited and Board-approved dental assisting programs.

(c) Retention of Approval.

1. The certification course, whether offered independently or as a part of the curriculum taught by a dental assisting program, shall maintain strict compliance with all minimum standards for admissions, facilities, instructor(s), equipment, and curriculum as set forth in this rule, as amended/may be amended, in order to obtain and/or retain Board approval.
2. The certification course shall be subject to on-site inspections by representatives of the Board and/or required to complete such paper surveys, as requested.
3. The Board shall be notified immediately of any changes made in the operation of the certification course, such as change of location, directorship, and/or instructors. A new certificate of approval will be issued in the event of change in either ownership or directorship of the course.
4. Certificates of approval shall be issued for one (1) year and shall expire on December 31st of any given year.

(d) Minimum Standards for Admissions, Facilities, Instructor(s), Equipment and Curriculum.

1. The certification course shall admit only those registered dental assistants who are currently registered pursuant to Rule 0460-4-.01 (2), or are currently enrolled in an ADA-accredited or Board-approved program which offers this course as a part of its curriculum. It is the responsibility of the course owner/director to ensure that only currently registered dental assistants are admitted to the course.
2. The certification course shall be taught by a dentist who is licensed in good standing by the Tennessee Board of Dentistry. The dentist/clinical instructor may employ and/or utilize licensed dental hygienists or registered dental assistants certified in dental radiology to assist during the clinical portion of the course.
3. The class shall be limited to forty (40) students and the clinical instructor-to-student ratio must be no less than one (1) instructor to eight (8) students (1:8) for the clinical portion of the course.
4. The certification course shall consist of a minimum of fourteen (14) hours of study. The course syllabus must be approved by the Board and this didactic course shall be designed and conducted to provide the student with detailed knowledge of dental radiology including radiation health and safety and its application to dentistry. The course shall include instruction in all of the following subject matters:
  - (i) Expose and evaluate
    - (l) Select appropriate radiographic technique.

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- (II) Select appropriate radiographic film to examine, view, or survey conditions, teeth or landmarks.
- (III) Select appropriate equipment for radiographic techniques.
- (IV) Select patient management techniques before, during and after radiographic exposures.
- (ii) Radiation Safety
  - (I) Patient.
  - (II) Operator.
- (iii) Quality Assurance
  - (I) Identify exposure errors and ways to avoid these errors in future exposures.
  - (II) Identify processing errors and ways to avoid these errors.
  - (III) Correctly mount and label radiographs for diagnostic assessment.
- (e) Upon completion of the course, students shall be evaluated by written examination. The passing grade shall be seventy percent (70%). If the student initially fails the written examination, the exam may be taken no more than two (2) additional times before the course must be retaken and the exam retaken. The examination shall be developed and administered by the course director/instructor in such a manner as to determine competency in dental radiology.
- (f) The certification course, or dental assisting school, shall not issue continuing education credit hours for the course.
- (g) The director/instructor of the certification course shall, within thirty (30) days after course completion or upon graduation from the dental assisting school, complete a form, provided by the Board, for each student to attest to the student's successful completion of the course and the student's examination grade. The completed forms shall be submitted directly to the Board's Office by the director/instructor.
- (h) Failure to adhere to the rules governing the certification course or to provide access to inspection, pursuant to Rule 0460-5-.03 (7) (c), may subject the course provider and students to invalidation of the course results and withdrawal of course approval issued by the Board.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.

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### NEW RULES

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0460-3-.12 Administration of Local Anesthesia Certification

0460-4-.11 Dental Radiology Certification

**0460-3-.12 ADMINISTRATION OF LOCAL ANESTHESIA CERTIFICATION.** A licensed dental hygienist in Tennessee must obtain certification to administer local anesthesia before he/she can administer local anesthesia on any patient.

- (1) Qualifications for Certification – One (1) of the following qualifications must be completed:
  - (a) Be a graduate of an ADA Commission on Dental Accreditation approved dental hygiene program which teaches the administration of local anesthesia to clinical competency; or
  - (b) Complete a Board-approved certification course in administration of local anesthesia; or
  - (c) Have completed a certification course in another state that the Board determines is equivalent to the Board-approved course. The course must submit the curriculum, including the number of hours and injections required in the course, and a letter attesting that the course was taught to clinical competency to the Board's Administrative Office for review by the Board. If the Board determines the course is not equivalent, the licensed dental hygienist will be required to comply with the provisions of subparagraphs (a) or (b) before certification can be issued.
- (2) Procedures for Certification – After successful completion of a Board-approved certification course, an ADA Commission on Dental Accreditation dental hygiene program which included instruction in the administration of local anesthesia or a certification course from another state that is equivalent to the Board-approved course, an applicant shall:
  - (a) submit a completed application on a form provided by the Board Administrative Office; and
  - (b) submit the Local Anesthesia Certification Fee required by 0460-1-.02; and
  - (c) cause verification of successful completion of a the course attesting that the course was taught to clinical competency to be sent must be sent directly from the school to the Board Administrative Office. If the course was Board-approved, a temporary permit will be issued pending verification of completion of the externship.
- (3) Conditions of Certification
  - (a) Certification in administration of local anesthesia is valid only when the dental hygienist has a current license to practice dental hygiene. If the license expires or is retired, the certification is also considered expired or retired and the dental hygienist may not perform administration of local anesthesia until the license is reinstated or reactivated.
  - (b) A licensed dental hygienist with certification to administer local anesthesia shall prominently display, at the place of employment, the current renewal certificate, which is received upon licensure and renewal.

## RULEMAKING HEARINGS

- (c) A licensed dental hygienist with certification to administer local anesthesia shall administer local anesthesia only under the direct supervision of a licensed dentist who
1. examines the patient before prescribing the procedures to be performed; and
  2. is physically present at the same office location when the local anesthesia is administered; and
  3. designates a patient of record upon whom the procedures are to be performed and describes the procedures to be performed; and
  4. examines the patient upon completion of the procedures.
- (d) Following the administration of local anesthesia by a licensed dental hygienist the following information shall be documented in the patient record:
1. date and time of administration;
  2. identity of individual administering;
  3. type of anesthesia administered;
  4. dosage/amount administered;
  5. location/site of administration; and
  6. any adverse reaction.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

**0460-4-.11 DENTAL RADIOLOGY CERTIFICATION.** Registered dental assistants with this certification may expose dental radiographs under the direct supervision of a licensed dentist.

- (1) A dental assistant must be currently registered, pursuant to Rule 0460-4-.02, by the Board in order to be eligible to attend a certification course in dental radiology and/or qualify for certification.
- (2) To be eligible for certification, the registered dental assistant must successfully complete a Board-approved dental radiology training course or be currently enrolled in an ADA-accredited or Board-approved program which offers this course as part of their curriculum. Once eligible for certification, the registered dental assistant shall not expose dental radiographs until certification has been issued by the Board.
- (3) Registered dental assistants, who have also successfully completed a comparable assistant training program in another state in dental radiology, are eligible to apply directly to the Board of Dentistry for a dental radiology certificate without additional training.
- (4) Dental radiology certification shall be added to the registration of the registered dental assistant, if the registered dental assistant has successfully completed a Board-approved certification course and notification of completion has been submitted to the Board's Administrative Office by the course director on a form provided by the Board.

## RULEMAKING HEARINGS

- (5) Registered dental assistants with radiology certification shall prominently display their current registration certification, which is received upon registration and renewal, at their place of employment.
- (6) Certification in dental radiology is only valid as long as the registered dental assistant has a current registration. If the registration expires or is retired, the certification is also considered expired or retired and the dental assistant may not expose dental radiographs until the registration is reinstated or reactivated.
- (7) Application review and decisions required by this rule shall be governed by 0460-1-.04.

**Authority:** *T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-115.*

### REPEAL

Rule 0460-4-.03, Examinations is repealed.

**Authority:** *T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-111.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of January, 2006. (01-30)



## RULEMAKING HEARINGS

### **THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL**

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at these hearings will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 17th Floor Conference Room A of the L & C Tower , located at 401 Church Street, , Nashville, Tennessee 37243-1531, at 1:00 p.m. CST on Monday, March 20, 2006. Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of their comments to be submitted to the hearing officer at the public hearing.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Monday, March 20, 2006, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to March 20, 2006, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact Mr. John Rae White, Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Lacey Hardin at 615-532-0545. Copies of documents concerning this matter are available for review at the office of the technical secretary and at certain public depositories. For information about reviewing these documents, please contact Ms. Lacey Hardin or Mr. Malcolm Butler, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0554. For complete copies of the text of the notice, please contact Lida Galbreath, Department of Environment and Conservation, 9th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243.

### **SUMMARY OF PROPOSED CHANGES**

#### **CHAPTER 1200-3-9 CONSTRUCTION AND OPERATING PERMITS AMENDMENTS**

Rule 1200-3-9-.01 CONSTRUCTION PERMITS of the Tennessee Air Pollution Control Regulations is proposed to be amended by modifying the definition of "baseline actual emissions" to allow the use of different consecutive twenty-four (24) month periods for different pollutants when determining the baseline actual emissions if certain requirements are met. The federal New Source Review regulations allow this to be done; Tennessee had elected to restrict the definition so that a single consecutive twenty-four (24) month period was required, but information was presented.

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SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-3-9  
CONSTRUCTION AND OPERATING PERMITS

AMENDMENTS

Chapter 1200-3-9 Construction and Operating Permits is amended in the following four (4) respects:

Item (III) of subpart (i) of part 45. of subparagraph (b) of paragraph (4) of rule 1200-3-9-.01 CONSTRUCTION PERMITS is amended by substituting for the present item a different item so that, as amended, the resulting item shall read:

- (III) For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
- I. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the *voluntary* use of:
    - A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
    - B. a coating with a lower VOC content than otherwise permitted in a coating operation,
    - C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
    - D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
  - III. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
  - IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

## RULEMAKING HEARINGS

Item (IV) of subpart (ii) of part 45. of subparagraph ((b) of paragraph (4) of rule 1200-3-9-.01 CONSTRUCTION PERMITS is amended by substituting for the present item a different item so that, as amended, the resulting item shall read:

- (IV) For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
- I. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - II. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the *voluntary* use of:
    - A. a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
    - B. a coating with a lower VOC content than otherwise permitted in a coating operation,
    - C. a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
    - D. alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
  - III. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
  - IV. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

Subitem III. of item (I) of subpart (xlvii) of part 1. of subparagraph (b) of paragraph (5) of rule 1200-3-9-.01 CONSTRUCTION PERMITS is amended by substituting for the present subitem a different subitem so that, as amended, the resulting subitem shall read:

- III. For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific 24-month baselines in determining the magnitude

## RULEMAKING HEARINGS

of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:

- A. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
- B. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the *voluntary* use of:
  - (A) a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
  - (B) a coating with a lower VOC content than otherwise permitted in a coating operation,
  - (C) a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
  - (D) alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
- C. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
- D. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

Subitem IV. of item (II) of subpart (xlvii) of part 1. of subparagraph (b) of paragraph (5) of rule 1200-3-9-.01 CONSTRUCTION PERMITS is amended by substituting for the present subitem a different subitem so that, as amended, the resulting subitem shall read:

- IV. For a regulated NSR pollutant, when a project involves multiple emissions units, one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. However, the Technical Secretary is authorized to allow the use of multiple, pollutant specific 24-month baselines in determining the magnitude of a significant net emissions increase and the applicability of major new source review requirements if all of the following conditions are met:
  - A. Construction of a new source or modification would become subject to major new source review if a single 2-year baseline is used for all pollutants.
  - B. One or more pollutants were emitted during such 2-year period in amounts that were less than otherwise permitted for reasons other than operations at a lower production or utilization rate. Qualifying examples include, but are not limited to, the *voluntary* use of:

## RULEMAKING HEARINGS

- (A) a cleaner fuel than otherwise permitted in a fuel burning operation (e.g., natural gas instead of coal in a multi-fuel boiler),
  - (B) a coating with a lower VOC content than otherwise permitted in a coating operation,
  - (C) a voluntary improvement in the control efficiency of an air pollution control device or the voluntary addition of a control device where one did not exist before, and
  - (D) alternate production methods, raw materials, or products that result in lower emissions of one or more pollutants.
- C. Use of alternate 2-year baselines for the pollutants described in 2. above would result in the construction of the new source or modification not being subject to major new source review.
- D. The use of the multiple baselines is not prohibited by any applicable provision of the USEPA's new source review regulations.

The burden for demonstrating that these conditions are met is upon the permit applicant. The demonstration and the Technical Secretary's approval will be made a part of the permit record.

Authority: T.C.A. §§68-201-105 and 4-5-202 et. seq.

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2004. (01-35)

## RULEMAKING HEARINGS

### **TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL**

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at these hearings will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 17th Floor Conference Room A of the L & C Tower , located at 401 Church Street, , Nashville, Tennessee 37243-1531, at 1:00 p.m. CST on Monday, March 20, 2006. Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of their comments to be submitted to the hearing officer at the public hearing.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Monday, March 20, 2006, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to March 20, 2006, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact Mr. John Rae White, Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Travis Blake at 615-532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243.

## **SUMMARY OF PROPOSED CHANGES**

### **CHAPTER 1200-3-37 CLEAN AIR MERCURY RULE**

#### **NEW RULE**

Tennessee is adding Rule 1200-3-37 CLEAN AIR MERCURY RULE to the Tennessee Air Pollution Control Regulations. This new rule is necessary to meet the EPA requirement for Tennessee to submit a State plan to control mercury emissions pursuant to 40 CFR §60.24(h). This new rule will require the owner/operators of affected electric utility steam generating units (EUSGUs) to comply with annual mercury emission limitations by limiting emissions from these sources, or by purchasing emission credits through a cap-and-trade program. The mercury emission reductions achieved through implementation of this new rule will be collectively adequate to provide for compliance with Tennessee's annual mercury budget as established under the Clean Air Mercury Rule (CAMR).

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**SUBSTANCE OF PROPOSED CHANGES**

**CHAPTER 1200-3-37  
CLEAN AIR MERCURY RULE**

**NEW RULE**

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1200-3-37-.01 Clean Air Mercury Rule

**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.
- (2) 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	Applicability.
§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 term.
§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]

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§60.4151	Establishment 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.



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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 through 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 SO<sub>2</sub> 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)&epsiv; <sup>1</sup> (incorporated by reference, see §60.17).

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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 than 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.

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- (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.

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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 ( $\mu\text{g}/\text{dscm}$ );
- (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  $\text{H}_2\text{O}$ .
- (4) A carbon dioxide monitoring system, consisting of a  $\text{CO}_2$  concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the  $\text{CO}_2$  concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of  $\text{CO}_2$  emissions, in percent  $\text{CO}_2$ ; and
- (5) An oxygen monitoring system, consisting of an  $\text{O}_2$  concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of  $\text{O}_2$ , in percent  $\text{O}_2$ .

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).

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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 through 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.

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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) (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.

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Ounce means  $2.84 \times 10^7$  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:

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- (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) & epsiv; <sup>1</sup> (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



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- (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<sub>2</sub>—carbon dioxide.

H<sub>2</sub>O—water.

Hg—mercury.

hr—hour.

kW—kilowatt electrical.

kWh—kilowatt hour.

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lb—pound.  
MMBtu—million Btu.  
MWe—megawatt electrical.  
MWh—megawatt hour.  
NO<sub>x</sub>—nitrogen oxides.  
O<sub>2</sub>—oxygen.  
ppm—parts per million.  
scfh—standard cubic feet per hour.  
SO<sub>2</sub>—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.

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- (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

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- (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.

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- (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.

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- (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<sub>x</sub> allowances," "CAIR NO<sub>x</sub> 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).

## RULEMAKING HEARINGS

- (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.

## RULEMAKING HEARINGS

- (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:



## RULEMAKING HEARINGS

- (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.

## RULEMAKING HEARINGS

### 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.

## RULEMAKING HEARINGS

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	State trading budget (tons)	
	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

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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.

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- (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.

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- (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:

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- (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.

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- (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



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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

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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

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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.

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- (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

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- (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.

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- (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.

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- (b) Notification of non-recording. 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-recording.
- (c) Nothing in this section shall preclude the submission of a Hg allowance transfer for recording following notification of non-recording.

### 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<sub>2</sub> or O<sub>2</sub> 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:

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- (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.



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- (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.

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- (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.

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- (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<sub>2</sub> concentration or the minimum potential O<sub>2</sub> 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.

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- (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

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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<sub>x</sub> Annual Trading Program, CAIR SO<sub>2</sub> Trading Program, or CAIR NO<sub>x</sub> 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<sub>x</sub> Annual Trading Program, CAIR SO<sub>2</sub> Trading Program, or CAIR NO<sub>x</sub> 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<sub>x</sub> Annual Trading Program, CAIR SO<sub>2</sub> Trading Program, or CAIR NO<sub>x</sub> Ozone Season

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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<sub>2</sub> emission data recorded in accordance with part 75 of this chapter document that the flue gas desulfurization system, or quality-assured NO<sub>x</sub> 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. §§68-201-105 and 4-5-202 et. seq.

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2006. (01-36)

## RULEMAKING HEARINGS

### DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF REMEDIATION DRYCLEANER ENVIRONMENTAL RESPONSE BOARD

There will be a hearing before the staff of the Drycleaner Environmental Response Board Tennessee Department of Environment & Conservation, Division of Remediation, Drycleaner Environmental Response Program, to receive public comments regarding the promulgation of amendments to Rule 1200-1-17, Drycleaner Environmental Response Program, pursuant to Tennessee Code Annotated 68-217-101 et. seq., the "Tennessee Drycleaner's Environmental Response Act". The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 17<sup>th</sup> floor Conference Room of the L&C Tower located at 401 Church Street, Nashville, Tennessee from 6:00 PM to 8:00 PM Central Time on the 29<sup>th</sup> day of March, 2006. Written comments will be considered if received by the close of business, April 5, 2006, in the office of Steve Goins, Division of Remediation, 401 Church Street, L&C Annex, 4<sup>th</sup> Floor, Nashville, TN 37243-1538.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment & Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to the hearing date to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

#### SUBSTANCE OF PROPOSED RULE AMENDMENTS

Rule 1200-1-17-.02 Definitions is modified by deleting all paragraph numbers and adding the following definition in alphabetical order so that the definition reads as follows:

"Applicant" means a PEP who submits an application for entry and participation in the program for environmental response activities.

**Authority:** T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

Paragraph (4)(a) of Rule 1200-1-17-.03 Registration, Fees and Surcharges, Certificate Issuance is amended so that, as amended, Rule 1200-1-17-.03(4)(a) shall read:

- (a) Certificates of Registration for each facility will be issued to the person who demonstrates substantial compliance, as determined by the department, with the Act and program regulations, including but not limited to applicable BMPs; submits a completed registration form; pays the annual registration fee; and timely submits quarterly solvent reports. The certificate will contain the facility identification number, facility name and the facility address. The issuance of a certificate does not imply Fund eligibility or compliance with other regulations.

**Authority:** T.C.A. §§4-5-201 et seq. and 68-217-101 et seq.

Paragraph (3)(a)5 of Rule 1200-1-17-.04 Best Management Practices is amended by deleting it in its entirety.

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Paragraph (3)(a)6 of Rule 1200-1-17-.04 Best Management Practices is amended by renumbering the subparagraph as Rule 1200-1-17-.04(3)(a)5

Paragraph (3)(b)3 of Rule 1200-1-17-.04 Best Management Practices is amended by deleting it in its entirety.

**Authority:** *T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.*

The title of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended so that, as amended, the title for Rule 1200-1-17-.05 shall read:

### Qualifications and Procedures for Environmental Response Activities

Paragraph (1)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(1)(a) shall read:

- (a) Purpose. This rule is promulgated to establish guidelines and procedures by which applicants investigate and remediate facilities in order to preserve the right to seek reimbursement of expenses from the Fund.

Paragraph (1)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(1)(b) shall read:

- (b) Applicability. Requirements of this rule apply to all applicants.

Paragraph (2)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(2)(b) shall read:

- (b) An application must be submitted by the applicant to the Department in a format determined by the Department. The application shall be complete, legible and accurate, and shall include the following:

Paragraph (2)(b)2 of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph 2 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(2)(b)2 shall read:

2. In all applications, a person with appropriate legal authority shall grant the applicant, the applicant's contractor(s), and the Department the right of ingress and egress to the facility to perform the activities authorized by this program.

Paragraph (2)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(2)(c) shall read:

- (c) The Department shall confirm in writing to the applicant that an application has been received and identify any alleged deficiencies. Subject to the availability of DCERP funds, and after receipt and evaluation of a complete application, the Department shall notify the applicant to proceed with a facility inspection if the site is an active facility. The Department may also



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require a facility inspection of an abandoned facility. Based on the applicant's Fund eligibility certification in the application, the facility inspection shall preliminarily be considered a Fund eligible expense, subject to the appropriate deductible.

Paragraph (3) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (3) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(3) shall read:

### (3) Facility Inspection

If a facility inspection is required by the Department, the applicant shall perform the facility inspection. At a minimum, the facility inspection shall include a records review and an on-site inspection. The records review shall include, but not necessarily be limited to, documentation of the determination of FTEs (for those years fees were based on FTEs), solvent purchases, waste handling practices, equipment maintenance and repair, equipment upgrades, and other items requested by the Department. The on-site inspection shall include, but not necessarily be limited to, evaluation of equipment, operations, containment, solvent storage, waste disposal, signs or evidence of a release, compliance with BMPs, and other items requested by the Department. The applicant shall submit a facility inspection report to the Department in a format and according to a schedule determined by the Department. A facility may be reinspected by Department staff.

Paragraph (4)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(a) shall read:

- (a) After review of the application and facility inspection, the Department shall notify in writing all applicants of its determination on acceptance of the site into the program and Fund eligibility. If the site is denied entry into the program or Fund access based on the facility inspection, the notification shall include the reasons for denial and the opportunity to cure deficiencies, as provided below. The reasons for denial shall include the failure:

Paragraph (4)(b)4 of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph 4 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(b)4 shall read:

4. Notwithstanding the provisions of Rule 1200-1-17-.04(3)(b) and Rule 1200-1-17-.04(4)(b), if the Department's records reveal that applicable Class 1 and Class 2 BMPs have not been implemented, the facility operator will not be accepted into the program and will not be eligible for reimbursement of response costs other than the initial facility inspection, without regard to the 2007 deadline in those subparagraphs. Except as provided in Rule .04(7), the facility operator will be accepted into the program and will be eligible for fund reimbursement after correcting any such deficiencies. The applicant may request follow-up inspections after correcting deficiencies. However, all facility inspections subsequent to the initial facility inspection conducted at the applicant's request will not be Fund reimbursable.

Paragraph (4)(b)7 of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph 7 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(b)7 shall read:

7. If any deficiencies are not corrected within a time frame specified by the Department, the applicant will be denied Fund access. If Fund access is denied, the applicant shall

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have 30 days from the Department's mailing of the notice to appeal the denial to the Board. If the Board upholds the denial of Fund access, or if an appeal is not made within 30 days, the Department may revoke the operator's Certificate of Registration, notify solvent suppliers of such revocation and initiate activities to evaluate the site under Rule 1200-1-13, et seq., "Inactive Hazardous Substance Site Remedial Action Program."

Paragraph (5)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(5)(a) shall read:

- (a) For sites which receive a notice of Fund eligibility, the applicant shall perform a prioritization investigation according to a format established by the Department. The applicant shall submit a work plan; a cost proposal including, but not limited to, a breakdown of cost by category listed in the reimbursement request; a maximum cost which may not be exceeded in the prioritization investigation; and a schedule for implementation of the prioritization investigation. The applicant shall make any changes to either the work plan, cost proposal or schedule of implementation required by the Department. Subject to the availability of DCERP funds, approval of the work plan, cost proposal, and approval of the proposed schedule, the Department shall authorize implementation and notify the applicant to proceed with the prioritization investigation. The applicant shall implement the prioritization investigation as required by the Department. Following the prioritization investigation, the applicant shall submit the results of the prioritization investigation to the Department according to a schedule and in a format determined by the Department. The applicant may perform activities in addition to work requested by the Department at the prioritization investigation stage; however, only activities required by Department guidance or specifically pre-approved by the Department shall be Fund eligible expenses for the prioritization investigation. If additional activities are performed, results of the additional work shall be submitted to the Department within 45 days of the completion of any phase of additional activities.

Paragraph (6)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(6)(a) shall read:

- (a) The Department shall utilize the prioritization investigation report and other applicable information to prioritize approved sites for further investigation or interim action.

Paragraph (6)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(6)(b) shall read:

- (b) Subject to the availability of DCERP funds, additional activities will be approved at sites in accordance with the priority ranking schedule.

Paragraph (7)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(7)(a) shall read:

- (a) Interim Action
  - 1. The Department shall notify the applicant of the Department's determination of the need for interim action within 60 days of receiving a complete prioritization investiga-

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tion. Subject to the availability of funds, the Department shall notify the applicant to prepare a work plan, cost proposal, and schedule of implementation to perform interim action, which shall be submitted to the Department according to the schedule and in the format required by the Department. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department.

2. Subject to the availability of funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule the Department shall authorize implementation and notify the applicant to proceed with the interim action. The applicant shall implement the interim action as approved by the Department. The DCERP Board may declare the site ineligible for reimbursement if the interim action is not performed in accordance with the schedule and work plan requested by the Department.
3. Following the interim action, the applicant shall submit the interim action report to the Department according to a schedule and in a format determined by the Department. If the applicant or the Department performed interim action at the site, then the site will be reprioritized for investigation.

Paragraph (7)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(7)(b) shall read:

### (b) Solvent Impact Assessments

1. The Department shall notify the applicant of the Department's determination of the need for solvent impact assessment within 60 days of receiving a complete prioritization investigation. Subject to the availability of funds, the Department shall notify the applicant to prepare a work plan, cost proposal, and schedule of implementation to perform the solvent impact assessment, which shall be submitted to the Department for approval according to the schedule and in the format required by the Department. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department.
2. Subject to the availability of funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule the Department shall authorize implementation and notify the applicant to proceed with the solvent impact assessment. The applicant shall implement the solvent impact assessment as approved by the Department. Following the investigation, the applicant shall submit the solvent impact assessment report to the Department according to a schedule and in a format determined by the Department.
3. Subject to Rule .08(6)(g) minor adjustments in the approved work plan, as required based on field or subsurface conditions, do not require approval by the Department.

Paragraph (7)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(7)(c) shall read:

### (c) Supplemental Investigations

1. If the Department requires the applicant to perform supplemental investigation at the site the applicant shall submit an addendum work plan to conduct the neces-

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sary investigation, a cost proposal, and schedule to the Department according to the schedule and in the format requested by the Department. The applicant shall make any changes to the work plan, cost proposal or schedule of implementation required by the Department.

2. Subject to the availability of DCERP funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule, the Department shall authorize implementation and notify the applicant to implement the work plan as approved.
3. Following completion of the supplemental investigation, the applicant shall submit the investigation results to the Department according to a schedule and in the format requested by the Department.

Paragraph (8) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (8) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(8) shall read:

- (8) If requested in writing by the Department, following the Department's review of the investigation report, the applicant shall submit a remedial alternatives study report to the Department according to a schedule and in a format requested by the Department. The remedial alternatives study format may include a description of proposed pilot testing, response action, or alternative remedial approaches. A cost proposal for the proposed activities outlined in the remedial alternatives study may also be required at this time.

Paragraph (9)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(9)(c) shall read:

- (c) The Department shall notify the applicant, in writing, of the site's remediation priority ranking group and the relative ranking for the site within that group. Sites in the program are at any time subject to reprioritization by the Department based upon the receipt of additional data that may affect the prioritization determination.

Paragraph (9)(e) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (e) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(9)(e) shall read:

- (e) Subject to the availability of DCERP funds, remedial actions will be approved at sites in accordance with the remediation priority ranking schedule. For sites which have equivalent ranking status within a single group, funds will be authorized according to the chronological order in which the applications were received.

Paragraph (10) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (10) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(10) shall read:

### (10) Implementation of Remediation

1. Based on availability of funds, the site ranking, and the remediation required, the Department shall notify a applicant to prepare a work plan, cost proposal and schedule of implementation to perform the remediation activities. The applicant shall make any changes or modifications to the work plan, cost proposal, or schedule of implementa-

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tion required by the Department. Subject to the availability of funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule of implementation, the Department shall authorize implementation and notify the applicant to perform the necessary approved remedial action at the site. The applicant shall implement the remediation plan as approved by the Department.

The DCERP Board may declare a site ineligible for reimbursement if a remedial action is not performed in accordance with the schedule and work plan requested by the Department.

2. Following the implementation of the approved work plan, the applicant shall submit to the Department a remediation report containing a description of the activities undertaken during the remediation, observations made, sampling results, and other information requested by the Department according to a schedule and format determined by the Department. If the remediation will require long-term operation and maintenance or monitoring, the applicant shall submit the remediation report after all approved activities other than operation and maintenance or monitoring have been completed.
3. If the remediation requires long-term operation and maintenance (O&M) or monitoring, the applicant shall prepare an O&M or monitoring plan according to a schedule and in the format required by the Department and submit the O&M or monitoring plan to the Department. The applicant shall make any changes or modifications to the plan required by the Department. The applicant shall implement the O&M or monitoring plan as approved.

Paragraph (11) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (11) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(11) shall read:

- (11) After all required interim action, investigation, remediation, or other required activities are completed at the site, a response complete letter shall be issued to the applicant by the Department. Following issuance of the response complete letter and reimbursement of all authorized costs, the site shall return to non-Fund eligible status and, unless otherwise approved by the Board, the applicant may no longer receive Fund reimbursements without reapplying for Fund eligibility. Nothing in this paragraph shall prevent the Department from issuing an interim status letter while O&M or monitoring at a site is ongoing, or from continuing Fund reimbursement of authorized costs related to such O&M or monitoring after issuance of an interim status letter.

Paragraph (12)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(12)(c) shall read:

- (c) Notwithstanding the request for and provision of oversight under the program pursuant to either paragraph (a) or (b) above, any applicant may apply for entry of a facility in the program under Rule 1200-1-17-.05 and proceed to comply with the requirements there under; provided, that any costs incurred under oversight pursuant to (a) or (b) above shall not be reimbursable from the program Fund. The program oversight fee under (b) above will be applied to the deductible should any applicant enter said facility into the reimbursement program.

**Authority:** T.C.A. §§4-5-201 et seq. and 68-217-101 et seq.

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Paragraph (4) of Rule 1200-1-17-.06 Withdrawing an Applicant’s Grant of Approval is amended by deleting paragraph (4) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.06(4) shall read:

- (4) Except as provided in Rule .06(5), if a person becomes ineligible for Fund reimbursement because of conduct occurring after the granting of the petition for entry into the program, another applicant may only obtain reimbursement from the Fund for the site only so long as all requirements for the site, including the payment of registration fees, surcharges, and penalties thereon are met.

**Authority:** T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

Paragraph (1)(c) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(1)(c) shall read:

- (c) Clean-Up Before the Designation of Fund Monies
1. In the event that an applicant for any reason undertakes actions, which are reimbursable under the Act after entry into the DCERP program, but before Fund money is designated for investigation or remediation of the site under the priority ranking system, the applicant may perform approved actions in accordance with this Rule Chapter. Funds shall be obligated for and reimbursed to the applicant for eligible expenses when funds become available pursuant to the priority ranking system.
2. An applicant that performs approved actions in accordance with this Rule Chapter shall be eligible for reimbursement according to the law, regulations and guidance in effect at the time the activities were performed. Applicants performing activities under this subparagraph must meet all requirements for fund eligibility applicable at the time the activities are performed in order to receive future reimbursement.
3. Only work plans and cost proposals approved in writing by the DCERP staff after the effective date of these rules are applicable for reimbursement.

Paragraph (2)(b) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(2)(b) shall read:

- (b) Each applicant requesting reimbursement of expenditures approved by the Board or the Department is required to accept responsibility for incurring costs associated with each request for reimbursement, based on the facility classification in Rule 1200-1-17-.03(3)(c) in the following amounts (deductibles):

Table with 3 columns: Category, % of Each Reimbursement, Maximum. Rows include categories 1, 2, 3, Abandoned Drycleaning Facility, and In-state wholesale distribution facility.

An impacted third party’s deductible is the same as the facility for which Fund coverage is sought.

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The introductory clause of Paragraph (5) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting the introductory clause in its entirety and adding the following language, so that, as amended, the introductory clause to Rule 1200-1-17-.08(5) shall read:

### Maintaining Fund Eligibility

Applicants must meet the following requirements in order to maintain Fund eligibility:

The introductory clause of Paragraph (6) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting the introductory clause in its entirety and adding the following language, so that, as amended, the introductory clause to Rule 1200-1-17-.08(6) shall read:

### Requirements for Fund Reimbursement of Response Costs

An applicant who is Fund eligible is entitled to reimbursement of response costs for approved investigation and cleanup costs from the Fund subject to the following provisions:

Paragraph (6)(a) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(6)(a) shall read:

- (a) Applicants must perform initial response actions in accordance with Rule .04 including initial abatement measures and free product removal necessary to properly stabilize a site and to prevent significant continuing damage to the environment or risk to human health.

Paragraph (6)(b) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(6)(b) shall read:

- (b) Applicants must select a contractor from the Department's Drycleaner Approved Contractor (DCAC) list. The Department must be notified in writing of such a selection within thirty (30) days or other time specified by the Department. A contractual agreement must be established between the applicant and the contractor. The Department must be provided a letter signed by both parties confirming that a contractual relationship exists for environmental response actions.

Paragraph (6)(e) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (e) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(6)(e) shall read:

- (e) In addition to the requirements of .08(6)(c), the Department may request and upon that request the applicant shall submit an estimate of the total cost of remediation for the site which will be used by the Board and Department in projecting future funding requirements for the Fund. The estimate shall be updated by the applicant as more complete information regarding a site becomes available.

Paragraph (7)(b) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(7)(b) shall read:

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- (b) The application shall contain the following statement which shall be signed by the applicant and the project manager of the DCAC:
1. I certify to the best of my knowledge and belief: that a release of drycleaning solvent has occurred from the operation of the subject active or abandoned drycleaning facility or instate wholesale distribution facility; that the costs presented herein represent actual costs incurred in the performance of response actions at this site during the period of time indicated on this application; and that no charges are presented as part of this application that do not directly relate to the performance of response actions related to the release of solvent at this site.
  2. Any material misrepresentation or omission regarding said application may be considered willful noncompliance with these regulations and may serve as a sufficient basis for the Department's denial of the application and access to Fund reimbursement.

Paragraph (8) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting paragraph (8) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(8) shall read:

(8) Fund Payment Procedures

- (a) Payments from the Fund will be made directly to the applicant in cases where the applicant submits documentation verifying it has paid authorized costs in excess of the applicable deductible.
- (b) Where the applicant has submitted an acceptable application for payment for response actions, but has not paid for these activities or claims, payments will be made by a check written to both the applicant and the contractor(s) performing the work, less the applicable deductible.
- (c) The applicant is responsible for final payments to the contractor(s) performing the work including program deductibles. The applicant is responsible for making timely payments to the contractor(s).
- (d) The Department shall review applications for payment within (90) days of receipt of a properly completed application. The Department shall issue either a letter of application approval or a status review letter within (90) days of receipt of an application. A status review letter from the Department to the applicant shall note such items as: what clarifications or additional information, if any, are needed in order to complete the application review and what problems were encountered, if any, in interpreting or evaluating the application.

If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within forty-five (45) days of approval by the Department. If certain costs are considered unreasonable or ineligible for reimbursement, the Department shall issue a check for the amount of the application not in question, give notice to the applicant of those costs denied reimbursement and the reasons for denial, and provide a forty-five (45) day period in which the applicant or DCAC may present such information as is necessary to justify the disallowed costs. Following review of such information, the Department may agree to pay the previously disallowed costs, or any portion thereof, or may again disallow the costs for payment based on material non-compliance with these rules or administrative guidance issued hereunder.

**Authority:** T.C.A. §§ 4-5-201 et seq. and 68-217-101 et seq.



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The introductory clause of Rule 1200-1-17-.09 Contractors is amended by deleting the introductory clause in its entirety and adding the following language, so that, as amended, the introductory clause to Rule 1200-1-17-.09 shall read:

Contractors are not beneficiaries of this Fund and shall have no right of claim against it. And any and all claims shall be against the applicant who hired the contractor. An applicant can assign its rights to reimbursement from the Fund to its contractor for reimbursement amounts arising under the contract.

Neither an applicant nor the applicant's contractor shall file false or inaccurate information with the Department. Both the applicant and the applicant's contractor are required to follow the methods and procedures established by the DCERP for actions related to, but not limited to, release response, facility inspections, investigations, and remediation of sites. The applicant is required to compile and maintain copies of all technical or other documentation and reports required by the Department in the event that the contractor ceases to exist.

Paragraph (3)(n) of Rule 1200-1-17-.09 Contractors is amended by deleting subparagraph (n) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(3)(n) shall read:

- (n) If it becomes reasonably apparent, while conducting environmental response activities, that an interim action is warranted to abate or mitigate an imminent and substantial danger to human health or the environment, the DCAC shall take such action within twenty-four (24) hours after discovery of the danger and shall provide notice to the applicant of said action.

**Authority:** T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of January, 2006. (01-32)

RULEMAKING HEARINGS

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF REMEDIATION**

There will be a hearing conducted by the Division of Remediation on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Dyer County Courthouse, Circuit Court Room, 2<sup>nd</sup> Floor, 101 West Court Street, Dyersburg, Tennessee, 38024 on March 21, 2006, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-1-13  
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

**AMENDMENTS**

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by adding the following site to the list, such addition being made in a manner so that the entire list remains in numerical order:

<u>Site Number</u>	<u>Site Name</u>
	Dyer County (23)
23-501	Solid Waste Disposal Co. Dyersburg, TN

*Statutory Authority: T.C.A. § 68-212-206(e) and § 68-212-215(e).*

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of January, 2006. (01-13)

RULEMAKING HEARINGS

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF REMEDIATION**

There will be a hearing conducted by the Division of Remediation on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Dogwood Elementary School Library, 705 Tipton Avenue, Knoxville, Tennessee 37920 on March 16, 2006 at 6:00 p.m. EST. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-1-13  
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

**AMENDMENTS**

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by adding the following site to the list, such addition being made in a manner so that the entire list remains in numerical order:

<u>Site Number</u>	<u>Site Name</u>
	Knox County (47)
47-573	Dixie Barrel & Drum Co. Knoxville, TN

**Authority:** T.C.A. § 68-212-206(e) and § 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of January, 2006. (01-03)

## RULEMAKING HEARINGS

### TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1<sup>st</sup> Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16<sup>th</sup> day March 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

### SUBSTANCE OF PROPOSED RULE

Rule 1200-13-1-.02 Eligibility is amended by adding a new paragraph (9) which shall read as follows:

- (9) TennCare may provide a 45 day period of presumptive eligibility in conjunction with an approved Pre-Admission Evaluation for persons seeking admission to a Home and Community Based Services program as described in rules 1200-13-1-.17, 1200-13-1-.26 or 1200-13-1-.27. Such Presumptive Eligibility shall only be valid for the payment of covered services provided in the Home and Community Based Services program during the period of presumptive eligibility. Such Presumptive Eligibility shall not be valid for the payment of any Medicaid services other than those covered in the Home and Community Based Services program.

**Authority:** T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of January, 2006. (01-12)

RULEMAKING HEARINGS

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1<sup>st</sup> Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16<sup>th</sup> day March 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

**SUBSTANCE OF PROPOSED RULE**

Paragraph (3) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (3) which shall read as follows:

(3) Maximum Lifetime Limitations.

The following maximum lifetime limitations shall apply to the services outlined in paragraphs (1) and (2) above. The managed care organizations shall not impose service limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care organization's discretion. Determination of these limitations shall be based upon the managed care organization's payments for those services and shall exclude payments made by the enrollee in the form of deductibles, copayments, and/or special fees. Children under age 21 are exempt from limitations on substance abuse services.

Detoxification	Ten (10) days
Substance abuse benefits (Inpatient and outpatient)	\$30,000

**Authority:** T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of January, 2006. (01-18)

RULEMAKING HEARINGS

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1<sup>st</sup> Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16<sup>th</sup> day March 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

**SUBSTANCE OF PROPOSED RULE**

Paragraph (4) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (4) which shall read as follows:

(4) Maximum Lifetime Limitations.

The following maximum lifetime limitations shall apply to the services outlined in paragraphs (1) and (2) above. The managed care organizations shall not impose service limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care organization's discretion. Determination of these limitations shall be based upon the managed care organization's payments for those services and shall exclude payments made by the enrollee in the form of deductibles, copayments, and/or special fees. Children under age 21 are exempt from limitations on substance abuse services.

Detoxification	Ten (10) days per lifetime
Substance abuse benefits (Inpatient and outpatient)	\$30,000

**Authority:** T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.  
Administration

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of January, 2006. (01-19)

## RULEMAKING HEARINGS

### DEPARTMENT OF HEALTH - 1200 TENNESSEE MEDICAL LABORATORY BOARD

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104, 68-29-105, 68-29-111, 68-29-112, 68-29-113, 68-29-114, and 68-29-118. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 17th day of March, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 1<sup>st</sup> Flr., Cordell Hull Building, 425 5<sup>th</sup> Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

### SUBSTANCE OF PROPOSED RULES

#### AMENDMENTS

Rule 1200-6-1-.01 Definitions, is amended by adding the following language as new paragraph (32) and renumbering the current paragraphs (32) and (33) as paragraphs (33) and (34):

- (32) Special Analyst, Level II-Chemical Terrorism. Any qualified employee of the Tennessee Department of Health who performs analyses in the Chemical Terrorism Level II Laboratory limited to blood and urine analyses for heavy metals, cyanide and metabolites of nerve agents utilizing Inductively Coupled Plasma Mass Spectrometer with a Dynamic Reaction Cell (ICP/DRC/MS0), in tandem with High Performance Liquid Chromatography (HPLC) and Gas Chromatograph Mass Spectrometry (GC/MS), and such other analyses and such other equipment that may be developed and implemented as part of the bioterrorism efforts.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, and 68-29-105.

Rule 1200-6-1-.21 Qualifications and Duties of the Medical Laboratory Supervisor, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (b) shall read:

- (1) (b) The medical laboratory supervisor shall meet one of the following requirements:
1. Be a physician licensed in Tennessee or hold a doctoral degree from an accredited college/university in a chemical, physical, biological, or clinical laboratory science. Subsequent to obtaining a doctoral degree the applicant must have at least two (2) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-22 (1) (h) in the area they wish to supervise.

## RULEMAKING HEARINGS

2. Hold a valid general medical laboratory technologist license in Tennessee or meet one (1) of the requirements under Rule 1200-6-1-.22 (1) (a) 1. through 5. and provide all required documentation in support of that qualification and have at least four (4) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-.22 (1) (h) in the area they wish to supervise.
3. Hold a valid general medical laboratory technologist license in Tennessee limited to one of the categories of chemistry, hematology, immunohematology, or microbiology and meet the requirements under Rule 1200-6-1-.22 (1) (c) and provide all required documentation in support of that qualification and have at least four (4) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-.22 (1) (h) subsequent to qualifying as a technologist. The license shall be limited to the category for which the applicant is qualified.
4. Hold a valid special analyst license limited to one (1) subspecialty or meet one (1) of the requirements under Rule 1200-6-1-.22 (1) (d) or (e) and provide all required documentation in support of that qualification and have at least four (4) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-.22 (1) (h) subsequent to qualifying as a special analyst. The license shall be limited to the subspecialty for which the applicant is qualified.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, and 68-29-118.

Rule 1200-6-1-.22 Qualifications, Responsibilities and Duties of Testing Personnel, is amended by deleting parts (1) (a) 2., (1) (a) 3. and (1) (a) 4., subparts (1) (a) 5. (i) and (1) (a) 5. (ii), and part (1) (b) 3. in their entirety and substituting instead the following language, and is further amended by adding the following language as subparagraph (1) (e) and renumbering the remaining subparagraphs accordingly, and is further amended by adding the following language as subparagraph (2) (d), so that as amended, the new parts (1) (a) 2., (1) (a) 3. and (1) (a) 4., subparts (1) (a) 5. (i) and (1) (a) 5. (ii), part (1) (b) 3., and subparagraphs (1) (e) and subparagraph (2) (d) shall read:

- (1) (a) 2. A baccalaureate degree from an accredited college/university, completion of an accredited MLT/CLT training program and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g); or
- (1) (a) 3. A baccalaureate degree from an accredited college/university, completion of an official military laboratory procedures course of at least fifty (50) weeks duration in residence and have held the military enlisted occupational specialty of Medical Laboratory Specialist, and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g); or
- (1) (a) 4. A baccalaureate degree from an accredited college/university and five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g); or



## RULEMAKING HEARINGS

- (1) (a) 5. (i) additionally have received a passing grade on a Health and Human Services proficiency examination in clinical laboratory science and completion of five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); or
- (1) (a) 5. (ii) have completed a minimum of ninety (90) semester hours including science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g) of this rule; and have completed a medical laboratory technologist training program that was approved at the time of graduation by the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) or a national accrediting agency acceptable to the Board.
- (1) (b) 3. An associate degree from an accredited college/university which included at least six (6) semester hours of chemistry and six (6) semester hours of biology and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (h).
- (1) (e) An individual may be issued a Special Analyst License, Level II-Chemical Terrorism upon meeting the following qualifications:
  - 1. The individual must be an employee of the Tennessee Department of Health Laboratory and perform analysis in the state's Chemical Terrorism Level II Laboratory; and
  - 2. The individual must perform only blood and urine analyses for heavy metals, cyanide and metabolites of nerve agents utilizing Inductively Coupled Plasma Mass Spectrometer with a Dynamic Reaction Cell (ICP/DRC/MS0), in tandem with High Performance Liquid Chromatography (HPLC) and Gas Chromatograph Mass Spectrometry (GC/MS), and such other analyses and such other equipment that may be developed and implemented as part of the bioterrorism efforts; and
  - 3. The individual must possess at least a baccalaureate degree in chemistry from an accredited college/university and be certified by a national certification body approved by the Board, where such certification or qualification exists; and
  - 4. The individual must successfully demonstrate to the Board that he/she has at least one (1) year experience with the Inductively Coupled Plasma Mass Spectrometer with a Dynamic Reaction Cell (ICP/DRC/MS0), and with High Performance Liquid Chromatography (HPLC), and with Gas Chromatograph Mass Spectrometry (GC/MS); and
  - 5. The individual must successfully demonstrate to the Board that he/she has at least one (1) year experience performing blood and urine analyses.
- (2) (d) Responsibilities and duties of the Special Analyst License, Level II—Chemical Terrorism include all the responsibilities and duties for the Special Analyst listed in subparagraph (2) (c), but only as those responsibilities and duties pertain to the tests for which they are authorized to conduct pursuant to subparagraph (1) (e).

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, and 68-29-118.

## RULEMAKING HEARINGS

Rule 1200-6-3-.02 Licensing Procedures, is amended by adding the following language as new subparagraph (4) (h):

- (4) (h) T.C.A. § 68-29-112 Fee – A nonrefundable fee to be paid when there is a change in laboratory ownership, directorship, or location.....\$ 100.00

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-111, 68-29-112, and 68-29-113.

Rule 1200-6-3-.03 Change in Location, Director, Owner, Supervisor or Testing in a Medical Laboratory, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1) through (3):

- (1) It shall be the responsibility of the owner of a laboratory to notify the Department in writing of a change in the location, director, owners or supervisor of the laboratory within fifteen (15) days of the actual change.
- (2) If the matter involves a change of the owner, and/or director and/or the location an application for a new license, including payment of the T.C.A. § 68-29-112 Fee as provided in Rule 1200-6-3-.02 (4), must be filed and a new license obtained before the laboratory may provide services. That new license may be applied for and issued prior to the actual change but will be void should the change not actually take place.
- (3) It shall be the responsibility of the owner to notify the Department in writing in order to add a specialty or subspecialty not presently authorized by the facility's license prior to the commencement of testing and reporting patient test results. The Department must conduct an on-site inspection prior to the issuance of authorization for the specialty or subspecialty. A replacement license which includes new specialty or subspecialty shall be issued by the Department at no cost to the facility.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-112 and 68-29-114.

Rule 1200-6-3-.16 Alternate Site Testing, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Physician's Office Laboratories - Physician Office Laboratories (POLs) are exempt from licensure requirements of the Medical Laboratory Act
  - (a) To be eligible of this exemption, the following conditions must be met:
    1. The laboratory collects, accepts and tests only specimens from the private and personal patients of the physician who owns the practice or from the private and personal patients of any physician who is a member of a medical/physician group practice that owns and operates the laboratory regardless of the distance of any member physician's practice location from the group practice's laboratory or the number of specimens collected, accepted and/or tested; and
    2. The laboratory must be operated by the physician who owns the practice or through his own employees. In a medical/physician group practice, one (1) of the group's physicians must be designated to operate the laboratory. The designated physician is responsible for actual supervision and direct responsibility for the performance of the

## RULEMAKING HEARINGS

laboratory and its personnel which includes, but is not limited to, actual supervision and direct responsibility for quality assurance, quality control, and test management; and

3. The tests performed in the laboratory are used only for diagnosis and/or treatment of patients of the individual or group practice and are maintained in the practice's medical records for the patients for whom the test were performed.
  - (b) In the case of a medical/physician group practice, proof of affiliation with the group practice must be maintained at all offices in which the laboratory is not physically located and produced upon request by an authorized agent of the Department.
  - (c) Industrial or company physician practices, student health services and other arrangements in which a licensed physician is responsible for the continuing care of a group of patients on an ongoing basis will be designated to be POLs.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, and 68-29-105.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of January, 2006. (01-15)

## RULEMAKING HEARINGS

### **BOARD OF MEDICAL EXAMINERS - 0880 COMMITTEE ON PHYSICIAN ASSISTANTS**

There will be a hearing before the Tennessee Board of Medical Examiners' Committee on Physician Assistants to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-6-101, 63-19-104, and 63-19-201. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 6th day of April, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

### **SUBSTANCE OF PROPOSED RULES**

#### **AMENDMENTS**

0880-3-.20 Advertising, is amended by deleting the language of the rule in its entirety and is further amended by adding the following language as new paragraphs (1) through (6):

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning medical services, the importance of the interests affected by the choice of a physician assistant and the foreseeable consequences of unrestricted advertising by physician assistants which is recognized to pose special possibilities for deception, require that special care be taken by physician assistants to avoid misleading the public. The physician assistant must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by physician assistants is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
  - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a physician assistant who is licensed to practice in Tennessee.
  - (b) Licensee - Any person holding a license to practice as a physician assistant in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
  - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.

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- (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
  - (e) Discounted Fee - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (3) Advertising Fees and Services
- (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
  - (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
  - (c) Discount Fees. Discount fees may be advertised if:
    - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
    - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
  - (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
  - (e) Time Period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
  - (f) Remote Services. Any physician assistant who practices at any location other than the primary location or office at which his or her supervising physician practices a majority of the time must have the following included in any advertisement or on any sign for that location:
    - 1. The names of the physician assistant and his/her supervising physician; and
    - 2. An indication of what, if any, specialty or board certification is held by the physician; and
    - 3. An indication of whether the physician is available on-site or remotely.

## RULEMAKING HEARINGS

- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to Rule 0880-3-.15
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
  - (b) The misleading use of an unearned or non-health degree in any advertisement.
  - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
  - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
  - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
  - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
  - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
  - (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
  - (i) Any misrepresentation of a material fact.
  - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
  - (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
    - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
    - 2. The availability of alternatives; and
    - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
  - (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
  - (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.

## RULEMAKING HEARINGS

- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Committee may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
  - (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
  - (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
    - 1. Upon request provide a list of all licensees practicing at that location; and
    - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
  - (q) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
  - (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
  - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
  - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
  - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
  - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Committee or its designee.
  - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.

## RULEMAKING HEARINGS

- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-6-101, 63-19-104, and 63-19-114.

Rule 0880-10-.20 Advertising, is amended by deleting the language of the rule in its entirety and is further amended by adding the following language as new paragraphs (1) through (6):

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning medical services, the importance of the interests affected by the choice of an orthopedic physician assistant and the foreseeable consequences of unrestricted advertising by orthopedic physician assistants which is recognized to pose special possibilities for deception, require that special care be taken by orthopedic physician assistants to avoid misleading the public. The orthopedic physician assistant must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by orthopedic physician assistants is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
- (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of an orthopedic physician assistant who is licensed to practice in Tennessee.
- (b) Licensee - Any person holding a license to practice as an orthopedic physician assistant in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
- (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
- (e) Discounted Fee - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (3) Advertising Fees and Services



## RULEMAKING HEARINGS

- (a) **Fixed Fees.** Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
  - (b) **Range of Fees.** A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
  - (c) **Discount Fees.** Discount fees may be advertised if:
    - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
    - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
  - (d) **Related Services and Additional Fees.** Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
  - (e) **Time Period of Advertised Fees.** Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
  - (f) **Remote Services.** Any orthopedic physician assistant who practices at any location other than the primary location or office at which his or her supervising physician practices a majority of the time must have the following included in any advertisement or on any sign for that location:
    - 1. The names of the orthopedic physician assistant and his/her supervising physician; and
    - 2. An indication of what, if any, specialty or board certification is held by the physician; and
    - 3. An indication of whether the physician is available on-site or remotely.
- (4) **Advertising Content.** The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to Rule 0880-3-.15
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
  - (b) The misleading use of an unearned or non-health degree in any advertisement.

## RULEMAKING HEARINGS

- (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
  - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
  - 2. The availability of alternatives; and
  - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Committee may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
  - 1. Upon request provide a list of all licensees practicing at that location; and

## RULEMAKING HEARINGS

2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
  - (q) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
  - (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
  - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
  - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
  - (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
  - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
  - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Committee or its designee.
  - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-6-101, 63-19-104, and 63-19-201.

## RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of January, 2006. (01-14)

## RULEMAKING HEARINGS

### TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 2:00 p.m. (central) on the 20 day of March, 2006.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 251.

For a copy of this notice, contact: Sharla Dillon, Docket Manager, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37343, (615) 741-2904, extension 136.

Substance of rule amendments and proposed new rules as promulgated pursuant to 2004 Tenn. Pub. Acts 545 and 2005 Tenn. Pub. Acts 173 and 270.

### SUBSTANCE OF PROPOSED AMENDMENT

#### CHAPTER 1220-4-1 GENERAL PUBLIC UTILITY RULES

#### AMENDMENTS

Rule 1220-4-1-.04 Tariff Changes Require 30 Days Notice to the Authority is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) All tariffs, rate schedules or supplements thereto containing any change in rates, tolls, charges or rules and regulations must be filed with the Authority at least thirty (30) days before the effective date of such changes except as hereinafter provided. Upon application and for good cause shown, the Authority may waive the thirty (30) day time limit or any portion thereof.
  - (a) Tariffs, rate schedules or supplements thereto containing any changes in rates, tolls or charges that are valid for one hundred eighty (180) days or less filed by incumbent local exchange telephone companies as defined in Tenn. Code Ann. § 65-4-101(4) shall become effective one (1) business day after filing.
  - (b) Tariffs, rate schedules or supplements thereto containing any changes in rates, tolls or charges that are valid for more than one hundred eighty (180) days, including tariffs extending rates, terms or conditions beyond one hundred and eighty (180) days, filed by incumbent local exchange telephone companies as defined in Tenn. Code Ann. § 65-4-101(4) shall become effective twenty-one (21) business days after filing. Upon application and for good cause shown, the Authority may waive the twenty-one (21) day period or any portion thereof.

**Authority:** T.C.A. §§65-2-102, 65-5-101(c).

## RULEMAKING HEARINGS

Paragraph (4) of rule 1220-4-1-.06 Changes in Tariff is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (4) All tariffs and supplements affecting Tennessee intrastate business except those tariffs filed pursuant to 1220-4-1-.04(a) and 1220-4-1-.04(b) shall be filed with the Tennessee Regulatory Authority at least thirty (30) days before the date upon which they are to become effective, unless upon application and for good cause shown the Authority may waive the thirty (30) day time limit or any portion thereof.

**Authority:** *T.C.A. §§65-2-102, 65-5-101(c), 65-5-103(a).*

Rule 1220-4-1-.07 Special Contracts is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Authority. A copy of such special agreements shall be filed, subject to review and approval except as provided hereinafter.
  - (a) Rates and terms contained in special contracts negotiated between public utilities that are telecommunications providers and business customers shall be presumed valid and this presumption shall only be set aside by the Authority for the specific reasons set forth in Tenn. Code Ann. § 65-5-101(b).
  - (b) Records of such rates and terms shall be retained by the telecommunications provider for the length of time that such rates and terms apply but shall not be filed with the Authority. Such rates shall become effective upon execution by the parties.

**Authority:** *T.C.A. §§65-2-102 and 65-5-101(b).*

Part 3 of subparagraph (a) of paragraph (2) of rule 1220-4-1-.10 Reports-Uniform Financial Report Forms is amended by deleting the text of part 3 in its entirety and substituting instead the following language so that, as amended, part 3 shall read:

- (2) Type of Public Utilities
  - (a) Telephone Utility Companies
    3. Price-regulated carriers operating pursuant to Tenn. Code Ann. § 65-5-109 may be required to file only that financial information or financial reports that are required to be filed with the Federal Communications Commission. Such filing requirements may be satisfied by the carrier by the submission of a letter explicitly identifying a publicly-available government website on which the information is posted. The inspection, control and supervision fee established in Tenn. Code Ann. § 65-4-301 shall be based on the financial information contained in such federal reports.

**Authority:** *T.C.A. §§65-2-102, 65-4-401, 65-4-101, 65-4-104, 65-4-111, and 65-5-109.*

## RULEMAKING HEARINGS

### CHAPTER 1220-4-2 REGULATION FOR TELEPHONE COMPANIES

#### AMENDMENTS

Parts 1, 2 and 3 of subparagraph (b) of paragraph (2) of rule 1220-4-2-.55 Regulatory Reform is included for public comment to determine if revisions are necessary to ensure that IXCs and CLECs are treated similarly to other carriers.

(2) Intrastate InterLATA services.

(b) Tariff Rules and Regulations.

1. All facility-based providers of intrastate interLATA services shall file tariffs for all intrastate services. Such tariffs shall include a description of every intrastate service offered and terms and conditions for each service. The Authority shall evaluate market share based on data obtained from the Federal Communications Commission and/or other sources as the Authority may require.
2. Each service shall be made available at the rate specified in the tariffs to any customer meeting the terms and conditions for that service.
3. Tariff filings involving new services or rate increases may be suspended by the Authority only upon a showing of good cause.

Additionally, parts 1 and 2 of subparagraph (f) of paragraph (2) of rule 1220-4-2-.55 Regulatory Reform is amended by deleting in its entirety the text of parts 1 and 2 and substituting instead the following language so that, as amended, parts 1 and 2 shall read:

(f) Special Services or Contracts.

1. Rates and terms contained in special contracts negotiated between interexchange carriers and business customers shall be presumed valid and this presumption shall only be set aside by the Authority for the specific reasons set forth in Tenn. Code Ann. § 65-5-101(b).
2. Records of such rates and terms shall be retained by the interexchange carriers for the length of time that such rates and terms apply but shall not be filed with the Authority. Such rates shall become effective upon execution by the parties.

**Authority:** *T.C.A. §§65-2-102, 65-4-104, 65-4-111, 65-4-201, 65-5-102, 65-5-101(b) and 65-5-103.*

#### NEW RULE

1220-4-2-.59 Promotional Incentives:

- (1) All telecommunications providers shall be permitted to offer promotional incentives for telecommunications services, including rebates and limited free service offerings, provided that:
  - (a) Such promotions not extend more than six (6) months.

## RULEMAKING HEARINGS

- (b) Any such free service promotions shall not provide more than one (1) month of free local exchange service in any twelve (12) month period.
- (c) Any such free service promotion available for the full six (6) month period may not be reinstated for thirty (30) days after expiration of such period.

**Authority:** T.C.A. §65-37-101.

### NEW RULE

1220-4-2-.60 Price Differences Among Retail Telecommunications Customers:

- (1) Price differences among retail telecommunications customers shall be strictly prohibited to the extent that such differences are attributable to race, creed, color, religion, sex or national origin.
- (2) All other differences in pricing among retail telecommunications customers shall be presumed to be a function of the competitive market. This presumption may be rebutted by evidence of price discrimination as prohibited by Tennessee law.
- (3) In determining whether differences in pricing among retail telecommunications customers constitute price discrimination as prohibited by Tennessee law, all relevant factors shall be considered including, but not limited to, the following:
  - (a) whether customers have been or will be injured as a result of the alleged price differences;
  - (b) whether there is a legitimate business reason to distinguish between the customers who are being treated differently;
  - (c) whether the customers who are being treated differently are similarly situated;
  - (d) whether customers may choose a functionally equivalent service from an alternative service provider at substantially the same price and terms; and
  - (e) whether the TRA has determined previously that existing and potential competition is an effective regulator of the price of the service that is the subject of the complaint.

**Authority:** T.C.A. §65-37-102.

### NEW RULE

1220-4-2-.61 Bundled Services:

- (1) The Authority shall assert regulatory jurisdiction over retail offerings except retail offerings of combinations or bundles of products or services, whether or not such combinations or bundles of products or services are subject to a tariff or other regulatory filing with the TRA and whether or not comprised of products or services provided by a local exchange carrier alone or with another company. Nothing in this rule shall require any company to engage in joint marketing with another company when it does not choose to do so.



## RULEMAKING HEARINGS

- (2) As part of the terms and conditions for bundles or combinations, telecommunications carriers shall provide customers with the following notice: "This offer contains telecommunications services that are also available separately. Should you desire to purchase only the telecommunications services included in this offer, without additional products or services, you may purchase those telecommunications services individually at prices posted on [company website] or filed with the Tennessee Regulatory Authority."
- (3) Nothing in this rule shall alter the Authority's jurisdiction to hear complaints alleging price discrimination as prohibited by Tennessee law or anticompetitive practices regarding the provision of retail telecommunications services. Claims of anti-competitive practices in any retail telecommunications services market will be evaluated by applying applicable federal or state law and considering all relevant factors including, but not limited to, the following:
  - (a) the geographical and economic extent of commercial demand for functionally-equivalent services;
  - (b) the number and relative longevity of companies providing functionally-equivalent services;
  - (c) the relative gain or loss of revenues attributable to functionally-equivalent services and customers who purchase functionally-equivalent services;
  - (d) the relative increase or decrease in facilities-based investment attributable to providing functionally-equivalent services;
  - (e) the degree to which marketing, pricing and business strategies are utilized to acquire or maintain revenues attributable to functionally-equivalent services and customers who purchase functionally-equivalent services; and
  - (f) the relationship between pricing policies and costs of functionally-equivalent services.
- (4) Nothing in this rule shall alter the Authority's jurisdiction to review price regulation filings or conduct rate of return ratemaking analysis, as applicable, for ILEC telecommunications providers. Revenue for telecommunications services provided in combinations or bundles shall be considered regulated revenue for purposes of price regulation or rate of return rate analysis.
- (5) Nothing in this rule shall affect, alter or be construed to affect or alter the applicability of state or federal antitrust law or federal telecommunications law or the TRA's authority under federal telecommunications laws.

**Authority:** T.C.A. §65-37-103.

### CHAPTER 1220-4-8 REGULATIONS FOR LOCAL TELECOMMUNICATIONS PROVIDERS

#### AMENDMENTS

Subparagraph (b) of paragraph (2) of rule 1220-4-8-.07 Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers Local Service is included for public comment to determine if revisions are necessary to ensure that IXCs and CLECs respectively are treated similarly to other carriers.

## RULEMAKING HEARINGS

### (2) Pricing

- (b) Price increases for all local services, that are within the range of prices for a service on file with the Authority: shall become effective thirty (30) days following notification by direct mail to affected customers or by publication of a notice for the increase in a newspaper of general circulation in the affected service area. New price increases that are not within such range shall not become effective until a new informational tariff is filed with the Authority.

Additionally, paragraph (3) of rule 1220-4-8-.07 Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers Local Service is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

### (3) Special Contract Provisions

- (a) Rates and terms contained in special contracts negotiated between competing carriers and business customers shall be presumed valid and this presumption shall only be set aside by the Authority for the specific reasons set forth in Tenn. Code Ann. § 65-5-101(b).
- (b) Records of such rates and terms shall be retained by the competing carriers for the length of time that such rates and terms apply but shall not be filed with the Authority. Such rates shall become effective upon execution by the parties.

**Authority:** T.C.A. §§65-2-102, 65-5-101, 65-5-102, 65-5-103, 65-5-104, and Chapter 408 of Public Acts of 1995.

Subparagraph (d) of paragraph (2) of rule 1220-4-8-.09 Consumer Complaints, Anti-Competitive Complaints, and Violation of Applicable State Law and Authority Rules is amended by deleting the text of the subparagraph in its entirety because it did not comply with the new language in Tenn. Code Ann. § 65-37-102. The new language added in 1220-4-2-.60 applies to all telecommunications providers making this section of the rules unnecessary.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of January, 2006. (01-16)

## **WILDLIFE PROCLAMATIONS**

### **TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

#### **PROCLAMATION 06-01 PROCLAIMING THREE RIVERS WILDLIFE MANAGEMENT AREA**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-1-302 and 70-5-101 thereof, the Tennessee Wildlife Resources Commission, hereby proclaims the area below as a wildlife management area and hereafter to be known as Three Rivers Wildlife Management Area.

Those lands and waters located in Obion County, Tennessee, consisting of approximately 1,577 acres as posted. The North Fork of the Obion River is the east boundary, the Obion River is the south boundary and Davidson Creek is the west boundary. U.S. Hwy 45W goes through the property with 560 acres in the East Unit of Three Rivers WMA and 1,017 acres in the West Unit of Three Rivers WMA.

The boundary line is posted with "Wildlife Management Area" signs. A more complete description for this tract may be found on file in the Real Estate Division office of Tennessee Wildlife Resources Agency, Nashville, Tennessee.

Proclamation No. 06-01 received and recorded this 25th day of January, 2006. (01-25)

WILDLIFE PROCLAMATIONS

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

**PROCLAMATION 06-02**

**REPEALING DOE MOUNTAIN AND COVE MOUNTAIN WILDLIFE MANAGEMENT AREAS**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-1-302 and 70-5-101 thereof, the Tennessee Wildlife Resources Commission, hereby proclaims the areas known as Doe Mountain Wildlife Management and Cove Mountain Wildlife Management Area are no longer under the management of the Tennessee Wildlife Resources Agency; therefore, this proclamation repeals Proclamations 79-9 and 05-19 dated June 8, 1979, and July 21, 2005, respectively.

Proclamation No. 06-02 received and recorded this 25th day of January, 2006. (01-26)

WILDLIFE PROCLAMATIONS

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

**PROCLAMATION 06-03**

**AMENDING PROCLAMATION 05-15 – WILD TURKEY HUNTING SEASONS AND BAG LIMITS**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby amends proclamation 05-15 by inserting Three Rivers and by deleting Cove Mountain and Doe Mountain in Section III. D., so that as amended the section shall read:

Section III.

D. Wildlife Management Areas and Refuges Open With Statewide Seasons and Bag Limits:

Alpine Mountain, Arnold Hollow, Bark Camp Barrens, Barkley (Units I and II), Bean Switch Refuge, Beaver Dam Creek, Big Sandy (including Gin Creek), Bogota, Bridgestone/Firestone, Browntown, Buffalo Springs, Camden (Units I and II), Cedar Hill Swamp, Chickamauga, Chickasaw State Forest, Cheatham Lake, Cheatham Lake Pardue Pond Refuge and Dyson Ditch Refuge, Cold Creek Refuge, Cordell Hull, Cordell Hull Refuge, Cove Creek, Cypress Pond Refuge, Eagle Creek, Edgar Evins State Park, Flintville Hatchery, Gallatin Steam Plant (Archery only), Gooch, Harmon's Creek, Haynes Bottom, Henderson Island, Hick Hill, Hickory Flats, Hop-in Refuge, Horns Bluff Refuge, Jarrell Switch, Jackson Swamp, John Tully, Keyes-Harrison, Lick Creek, Lick Creek Bottoms, Long Pond, Maness Swamp Refuge, Maple Springs, Mingo Swamp, MTSU, Mt. Roosevelt, New Hope, Nolichucky, Normandy, North Cherokee, Obion River, Old Hickory (including Lock 5 Refuge), Owl Hollow Mill, Pea Ridge, Percy Priest Unit I (archery only) and Unit II, Pickett State Forest, Rankin, Royal Blue, Shelton Ferry, Standing Stone State Forest, Sundquist, Three Rivers, West Sandy, Tellico Lake (except McGhee-Carson and Niles Ferry Units), Tie Camp, Tigrett, Tumbleweed, Watts Bar, White Lake Refuge, White Oak, Yanahli are open to coincide with the statewide seasons and bag limits.

Proclamation No. 06-03 received and recorded this 25th day of January, 2006. (01-27)

WILDLIFE PROCLAMATIONS

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

**PROCLAMATION 06-04  
AMENDMENT TO PROCLAMATION 05-14  
WILDLIFE MANAGEMENT AREAS  
HUNTING SEASONS, LIMITS AND MISCELLANEOUS REGULATIONS**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following amendment to Proclamation 05-14 dealing with wildlife management areas hunting seasons, limits and miscellaneous regulations.

Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Bear Hollow Mountain (Page 8), by deleting the wording, “One turkey, either sex,” for the Spring Turkey (Youth) hunt and replace it with the following wording, “One bearded turkey.”

Proclamation No. 06-04 received and recorded this 25th day of January, 2006. (01-28)



### CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning January 3, 2006 and ending January 31, 2006.

A handwritten signature in black ink, reading "Riley C. Darnell". The signature is written in a cursive style with a large initial "R".

**RILEY C. DARNELL**  
Secretary of State