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October 14, 2005
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RILEY C. DARNELL
Secretary of State

Division of Publications
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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*.

Reproduction - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

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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 10.75%.

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.

Kevin P. Lavender

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 November 2005 is 8.66 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 4.66 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.

Kevin P. Lavender

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
09-01	Sept 1, 2005	1540 Higher Education Commission	Public Necessity Rules	Amendments	<i>Chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees 1540-1-5-.01 Definitions</i>	Will Burns Suite 1900 Parkway Twrs 404 James Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Sept 1, through Feb 13 2006
09-02	Sept 1, 2005	1540 Higher Education Commission	Proposed Rules	Amendments	<i>Chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees 1540-1-5-.01 Definitions</i>	Will Burns Suite 1900 Parkway Twrs 404 James Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Jan 27, 2006
09-03	Sept 1, 2005	0780 Commerce and Insurance Insurance Division	Public Necessity Rules	Amendments	<i>Chapter 0780-1-58 Medicare Supplement Insurance Minimum Standards 0780-1-58-.01 Purpose 0780-1-58-.02 Authority 0780-1-58-.03 Applicability and Scope 0780-1-58-.04 Definitions 0780-1-58-.05 Policy Definitions and Terms 0780-1-58-.06 Policy Provisions 0780-1-58-.07 Minimum Benefit Standards for Policies or Certificates Issued for Delivery prior to July 1 1992 0780-1-58-.08 Benefit Standards for Policies or Certificates Issued for Delivery after July 1 1992 0780-1-58-.09 Standard Medicare Supplement Benefit Plans 0780-1-58-.10 Medicare Select Policies and Certificates 0780-1-58-.11 Open Enrollment 0780-1-58-.12 Guaranteed Issue for Eligible Persons 0780-1-58-.13 Standards for Claims Payment 0780-1-58-.14 Loss Ratio Standards and Refund or Credit of Premium 0780-1-58-.15 Filing and Approval of Policies and Certificates and Premium Rates 0780-1-58-.16 Permitted Compensation Arrangements 0780-1-58-.17 Required Disclosure Provisions 0780-1-58-.18 Requirements for Application Forms and Replacement Coverage 0780-1-58-.19 Filing Requirements for Advertising</i>	John F. Morris Commerce and Insurance 5th Fl Davy Crockett Twr 500 James Robertson Pkwy Nashville Tennessee 37243 615-741-2199 (fax) 615-741-4000	Sept 1, through Feb 13, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-03 Cont.					0780-1-58-.20 Standards for Marketing 0780-1-58-.21 Appropriateness of Recommended Purchase and Excessive Insurance 0780-1-58-.19 Filing Requirements for Advertising 0780-1-58-.20 Standards for Marketing 0780-1-58-.21 Appropriateness of Recommended Purchase and Excessive Insurance 0780-1-58-.22 Reporting of Multiple Policies 0780-1-58-.23 Prohibition Against Preexisting Conditions Waiting Periods Elimination Periods and Probationary Periods in Replacement Policies or Certificates 0780-1-58-.24 Severability 0780-1-58-.25 Effective Date Appendix A Medicare Supplement Refund Calculation Form Reporting Form for the Calculation of Benchmark Ratio Since Inception of Group Policies Reporting Form for the Calculation of Benchmark Ratio Since Inception of Individual Policies Appendix B Form for Reporting Medicare Supplement Policies Appendix C Disclosure Statements Appendix D Statements and Questions to be Included in Application Forms Appendix E Notice to Applicant Regarding Replacement of Medicare Supplement Insurance or Medicare Advantage		
09-05	Sept 1, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.01 Definitions 1200-13-13-.02 Eligibility	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Nov 15, 2005
09-06	Sept 1, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.01 Definitions 1200-13-14-.02 Eligibility 1200-13-14-.05 Enrollee Cost Sharing	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Nov 15, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-07	Sept 6, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.12 Other Appeals By TennCare Applicants and Enrollees	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Nov 20, 2005
09-08	Sept 6 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.12 Other Appeals By TennCare Applicants and Enrollees	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Nov 20, 2005
09-10	Sept 6, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-1 Standards for Hospitals</i> 1200-8-1-.01 Definitions 1200-8-1-.06 Basic Hospital Functions 1200-8-1-.08 Building Standards 1200-8-1-.09 Life Safety 1200-8-1-.11 Records and Reports 1200-8-1-.12 Patient Rights 1200-8-1-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Nov 20, 2005
09-12	Sept 7, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendment	<i>Bureau of TennCare Chapter 1200-13-13</i> 1200-13-13-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Sept 7, through Feb 19, 2006
09-13	Sept 9, 2005	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-3-9 Construction and Operating Permits</i> 1200-3-9-.04 Exemptions	Mr. Jeff Cales Air Pollution Control Cookeville EAC 1221 South Willow Ave. Cookeville TN 38506 931-432-7621	Nov 23, 2005
09-14	Sept 9, 2005	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-3-2 Definitions</i> 1200-3-2-.01 General Definitions	Mr. Jeff Cales Air Pollution Control Cookeville EAC 1221 South Willow Ave. Cookeville TN 38506 931-432-7621	Nov 23, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-15	Sept 9, 2005	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-3-4 Open Burning</i> 1200-3-4-.02 Definitions 1200-3-4-.03 Open Burning Prohibited 1200-3-4-.04 Exceptions To Prohibition	Mr. Jeff Cales Air Pollution Control Cookeville EAC 1221 South Willow Ave. Cookeville TN 38506 931-432-7621	Nov 23, 2005
09-16	Sept 9, 2005	1200 Health Bureau of Health Licensure and Regulation Division of Emergency Medical Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-12-3 General Rules</i> 1200-12-3-.01 Response Agencies for Cardiac Emergencies	Richard F. Russell Health OGC TN Twr 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 23, 2005
09-17	Sept 12, 2005	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules		<i>Chapter 0780-1-81 Administration of Self Insurance Workers' Compensation Programs by Single Employers or Pools</i> 0780-1-81-.01 Purpose and Scope 0780-1-81-.02 Definitions 0780-1-81-.03 Written Agreement Necessary 0780-1-81-.04 Payment to Third Party Administrator 0780-1-81-.05 Maintenance of Information 0780-1-81-.06 Responsibilities of the Employer or Pool 0780-1-81-.07 Collection of Monies and Payments of Claims 0780-1-81-.08 Disclosure of Charges and Fees 0780-1-81-.09 Certificate of Authority 0780-1-81-.10 Grounds for Denial Suspension or Revocation of Certificate of Authority	John F. Morris or Tracey Gentry Harney Commerce and Insurance 5th Fl Davy Crockett Twr 500 James Robertson Pkwy Nashville Tennessee 37243 615-741-2199 (fax) 615-741-4000	Nov 26, 2005
09-18	Sept 12, 2005	0680 Board for Licensing Contractors	Rulemaking Hearing Rules		<i>Chapter 0680-1 Licensing</i> 0680-1-.02 Consideration of Applications 0680-1-.20 Fees	Alison G. Cleaves Commerce and Insurance Office of Legal Counsel 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville Tennessee 37243 (615) 741-0915	Nov 26, 2005

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-19	Sept 12, 2005	0800 Labor and Workforce Development Division of Occupational Safety and Health	Rulemaking Hearing Rules	Amendments	<i>Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry</i> 0800-1-1-.06 Adoption and Citation of Federal Standards <i>Chapter 0800-1-6 Occupational Safety and Health Standards for Construction</i> 0800-1-6-.02 Adoption and Citation of Federal Standards <i>Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture</i> 0800-1-7-.01 Adoption and Citation of Federal Standards	Michael M. Maenza Labor and Workforce Development Occupational Safety and Health 3rd Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville TN 37243-0659 (615) 741-7036	Jan 27, 2006
09-20	Sept 9, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-10 Standards for Ambulatory Surgical Treatment Centers</i> 1200-8-10-.01 Definitions 1200-8-10-.04 Administration 1200-8-10-.08 Building Standards 1200-8-10-.09 Life Safety 1200-8-10-.10 Infectious and Hazardous Waste 1200-8-10-.12 Patient Rights 1200-8-10-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Nov 23, 2005
09-27	Sept 22, 2005	1150 Occupational and Physical Therapy Examiners Committee of Physical Therapy	Rulemaking Hearing Rules	Amendments	<i>Chapter 1150-1 General Rules Governing the Practice of Physical Therapy</i> 1150-1-.02 Scope of Practice and Supervision 1150-1-.04 Qualifications for Licensure 1150-1-.12 Continuing Competence 1150-1-.14 Code of Ethics	Nicole Armstrong OGC TN Twr 26th fl 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Dec 6, 2005
09-29	Sept 26,	0620 Finance and Administration Bureau of TennCare	Public Necessity Rule	Amendment	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.03 Amount Duration and Scope of Assistance 1200-13-1-.06 Provider Reimbursement		Sept 26, through March 10 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-30	Sept 26,	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.05 Enrollee Cost Sharing	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Dec 10, 2005
09-31	Sept 26,	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.05 Enrollee Cost Sharing	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Dec 10, 2005
09-35	Sept 29, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Dec 13, 2005
09-36	Sept 29, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville TN 37243 (615) 507-6446	Dec 13, 2005
09-38	Sept 30, 2005	1200 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.10 Criteria for Medicaid Reimbursement of Care in Nursing Facilities	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Dec 14, 2005
09-41	Sept 30, 2005	1240 Human Services Medical Services	Public Necessity Rules	Amendments	<i>Chapter 1240-3-3 Technical And Financial Eligibility Requirements For Medicaid</i> 1240-3-3-.03 Resource Limitations For Categorically Needy	Phyllis Simpson Human Services Citizens Plaza Bldg 400 Deaderick St 15th Fl Nashville, TN 37248-0006 (615) 313-4731	Sept 30, 2005 through March 14, 2006
09-47	Sept 30, 2005	0500 Economic & Community Development Energy Division	Proposed Rules	Amendments Repeal	<i>Chapter 0500-3-4 Small Business Energy Loan Program</i> 0500-3-4-.04 Maximum Loan Amount 0500-3-4-.07 Eligibility 0500-3-4-.14 Undelivered Approval Notices	Stephanie Tisdale 11th Fl TN Twr 615-253-2006	Jan 27, 2006

ANNOUNCEMENTS

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BEFORE THE BOARD OF EMERGENCY MEDICAL SERVICES**

**PETITION FOR DECLARATORY ORDER
NOTICE OF HEARING
AND
NOTICE TO POTENTIALLY INTERESTED PARTIES**

Air-Evac Life Team, Inc. has filed a Petition for Declaratory Order pursuant to T.C.A. § 4-5-224 and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Rule 1360-4-1-.07.

1. Petitioner's Name: Air-Evac Life Team, Inc.

 Address: P.O. Box 768, West Plains, Missouri 65775

 Docket Number:

2. Petitioner's Attorney: William H. West

 Address: Commerce Center, Suite 1000
 211 Commerce Street
 Nashville, TN 37201

 Phone Number: (615) 726-5600

3. Organization, if any, that the Petitioner represents: Themselves

4. Statement of the facts that led to the filing of this petition.

The Petitioner was cited by the Emergency Medical Services Division in April 2005 for violation of Rule 1200-12-1-.05(2)(c)(2), (3), and (4) which requires emergency medical services helicopters to be equipped with two very high frequency omnidirectional ranging (VOR) receivers, one glide scope receiver and one nondirectional beacon receiver. In its Petition the petitioner challenges the capacity of the state of Tennessee to impose rules requiring Petitioner's aircraft to be quipped with the above mentioned equipment in light of the broad preemption of the regulation of aircraft safety by the Federal Aviation Administration (FAA). That the FAA imposes no requirements on the aircraft of the Petitioner or any other similar provider to possess the equipment required by EMS Rule 1200-12-1-.05(2)(c)(2), (3), and (4). That lack of the equipment specified is not a violation of FAA regulations or other federal standards for aircraft safety, and further that the Emergency Medical Services board is specifically prohibited by T.C.A. §68-140-507 from requiring licensure or permitting for individual aircraft.

The State of Tennessee may not, through EMS Rule 1200-12-1-.05(2)(c) or otherwise, regulate the aircraft of the petitioner as to safety requirements, or impose any sanctions on the Petitioner for failure to possess any designated aviation safety equipment or any other aviation equipment specified in the EMS Board's Rules.

ANNOUNCEMENTS

5. Provide a summary of the relief you are requesting including the specific nature of the requested order and the conclusions you would like the agency to reach at the conclusion of the declaratory process:

The Petitioner requests that the EMS Board (Board) determine that it does not have the power to require aircraft of the Petitioner or any other entity to exceed the requirements imposed by the FAA, and, therefore, the Board rules provisions 1200-12-1-.5(2) (c) (2), (3), and (4) have no application to the aircraft operated by the Petitioner.

Find that the ambulance inspection report deficiency statement for the ambulance inspection report dated April 1, 2005 is void as to those deficiencies cited, and that the Petitioner not be sanctioned in any manner by the EMS Board for the absence of the specified equipment.

6. Citation to the statute, rule or order which is the subject of the petition:

T.C.A. §§68-140-501, et seq.

T.C.A. §68-140-507

Emergency Medical Services Board Rule 1200-12-1-05(2)(c)(2), (3) and (4).

7. State how the statute, rule and/or order cited above specifically and directly produces an effect or result upon you:

See above

A hearing has been scheduled for November 30 and December 1, 2005 at 10: a. m. before the Board of Emergency Medical Services in the Cumberland Room of the Cordell Hull Building, Ground Floor, 425 5th Avenue North, Nashville, Tennessee 37247. Building, ground floor, 425 5th Avenue North, Nashville, Tennessee 37247.

If you have any questions, you may contact the Petitioner through its attorney, William H. West, Commerce Center, suite 1000, 211 Commerce Street, Nashville, Tennessee 37201, Telephone number (615) 726-5600.

This Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the Office of the Secretary of State, Publications Division, on the 29th day of September, 2005. (09-37)

Submitted for Publication by:

Mary Juanita Presley (#007089)
Assistant General
Tennessee Department of Health
William Snodgrass Tower, 26th Floor
312 Eighth Avenue North
Nashville, Tennessee 37243
(615) 741-1611

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.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

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

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules promulgated in response to the threat of Vesicular Stomatitis introduction into the State of Tennessee, Chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 8 T.A.R., Volume 31, Number 8, (August 2005) Filed July 25, 2005; effective through January 6, 2006. (07-25)
- 1240 - Department of Commerce and Insurance - Division of Insurance - Emergency Rules promulgated with respect to proper standards for health insurance issuers in paying insurance producers that sell contracts of health insurance coverage, Chapter 0780-1-88 TN Health Insurance Portability, Availability and Renewability Regulations - 8 T.A.R., Volume 31, Number 8, (August 2005) Filed July 26, 2005; effective through January 7, 2006. (07-32)
- 1360 - Department of State - Division of Charitable Solicitations - Emergency rules regarding procedure for filing applications, amendments, and financial accounting reports for organizations exempt from federal taxation, Chapter 1360-3-2 Procedures for Operating Charitable Gaming Events, 9 T.A.R., Volume 31 Number 9 (September 2005) Filed August 11, 2005; effective January 23, 2006. (08-14)

PROPOSED RULES

DEPARTMENT OF ECONOMIC & COMMUNITY DEVELOPMENT - 0500 ENERGY DIVISION

CHAPTER 0500-3-4 SMALL BUSINESS ENERGY LOAN PROGRAM

Presented herein are proposed amendments of the Small Business Energy Loan Program, Department of Economic & Community Development, submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department 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 are published. Such petition to be effective must be filed in the Department of Economic & Community Development, 11th Floor, Tennessee Tower, William Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243, 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 amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed rule, contact: Stephanie Tisdale, General Counsel, Department of Economic & Community Development, 11th Floor, Tennessee Tower, 615.741.1888.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 0500-3-4-.04 Maximum Loan Amount is amended by deleting the current language in its entirety and substituting instead the following language so that as amended the rule shall read:

0500-3-4-.04 MAXIMUM LOAN AMOUNT

The maximum loan amount available per applicant under this program shall be Three Hundred Thousand Dollars (\$300,000.00).

Authority: T.C.A. §§ 4-5-202, 4-3-702(c) and T.C.A. 4-3-710(1) and (8).

Subparagraph (a) of Paragraph (1) of Rule 0500-3-4-.07 Eligibility is amended by deleting the current language in its entirety and substituting instead the following language so that as amended the subparagraph shall read:

- (a) Be classified as either a small business of less than 300 employees or less than \$3.5 million in annual gross sales or receipts; or, a not-for-profit or tax exempt organization as classified by the Internal Revenue Service according to Section 501 (a) of the Internal Revenue Code of 1986, as amended; or, a unit of county or local government utilizing the loan to improve

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the energy efficiency of a building that the county or local government owns and rents or leases to a small business for commercial purposes; and,

Authority: *T.C.A. §§4-3-702(c); 4-3-709(2) and 4-3-710(1) and (8).*

Subparagraph (c) of Paragraph (1) of Rule 0500-3-4-.07 Eligibility is amended by deleting the current language in its entirety and substituting instead the following language so that as amended the subparagraph shall read:

- (c) Be declared financially sound and capable of repaying the monies borrowed according to criteria published by the Energy Division.

Authority: *T.C.A. §§4-3-702(c); 4-3-709(2) and T.C.A. 4-3-710(1) and (8).*

REPEALS

Rule 0500-3-4-.14 Undelivered Approval Notices is repealed.

Authority: *T.C.A. §§4-3-702(c).*

The proposed rules set out herein were properly filed in the Department of State on the 30th day of September, 2005, and pursuant to the instructions set out above, and the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 27th day of January, 2006. (09-47)

PROPOSED RULES

THE TENNESSEE HIGHER EDUCATION COMMISSION - 1540

CHAPTER 1540-1-5

PUBLIC HIGHER EDUCATION FEE DISCOUNTS FOR CHILDREN OF LICENSED PUBLIC SCHOOL TEACHERS AND STATE EMPLOYEES

Presented herein are amended rules of the Tennessee Higher Education Commission submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Higher Education Commission 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 to the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Suite 1900 of Parkway Towers located at 404 James Robertson Parkway, Nashville, Tennessee 37243 and in the Department of State, Administrative Procedures Division, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 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, 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: Rosie Padgett, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-3605.

AMENDMENTS

Paragraph (2) of Rule 1540-1-5-.01 Definitions is amended by deleting the current language in its entirety and replacing it with the following language so that as amended the paragraph shall read:

- (2) Certified teacher in any public school in Tennessee or Teacher: Teacher, supervisor, principal, superintendent and other personnel who is licensed by the Tennessee Department of Education or by a branch of the U.S. Armed Forces to teach Reserve Officer Training Corps, and employed by any local school system, for service in public, elementary and secondary schools in Tennessee supported in whole or in part by state funds. This term shall also include technology coordinators employed by any local school system, for service in public secondary schools in Tennessee supported in whole or in part by state funds.

Authority: *Public Chapter 447, Acts of 2005 and T.C.A. § 49-7-119.*

The proposed rules set out herein were properly filed in the Department of State on the 1st day of September, 2005, 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 27th day of January, 2006. (09-02)

PROPOSED RULES

THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 0800-1-1 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR GENERAL INDUSTRY

CHAPTER 0800-1-6 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION

CHAPTER 0800-1-7 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Occupational Safety and Health submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development 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 in the Legal Services Office of the Department of Labor and Workforce Development, 8th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0655, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 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 amendments, 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: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3rd Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

The text of the proposed amendments is as follows:

AMENDMENTS

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by changing the date in the second line from "July 1, 2005" to "January 1, 2006", so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2006 except as provided in Rule 0800-1-1-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

PROPOSED RULES

Paragraph (2) of Rule 0800-1-6-.02 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “July 1, 2005” to “January 1, 2006”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2006 except as provided in Rule 0800-1-6-.03 of this chapter.

Authority: *T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.*

Paragraph (2) of Rule 0800-1-7-.01 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “July 1, 2005” to “January 1, 2006”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2006 except as provided in Rule 0800-1-7-.02 of this chapter.

Authority: *T.C.A. §§4-3-1411 and 50-3-201.*

Rule 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by adding the paragraph number “(1)”, and changing the date in the second line from “July 1, 2005” to “January 1, 2006”, so that as amended the rule shall read:

0800-1-7-.02 EXCEPTIONS TO ADOPTION OF FEDERAL STANDARDS IN 29 CFR PART 1928.

- (1) As of January 1, 2006, there are no exceptions.

Authority: *T.C.A. §§4-3-1411 and 50-3-201.*

The proposed rules set out herein were properly filed in the Department of State on the 12th day of September, 2005, 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 27th day of January, 2006. (09-19)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

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

- 0400 - Department of Environment and Conservation - Petroleum Underground Storage Tank Division - Public Necessity rules dealing with incentives for tank owners, Chapter 1200-1-15 Underground Storage Tank Program, 9 T.A.R. (September 2005) Filed August 29, 2005; effective through February 10, 2006, (08-57)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-1 General Rules, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-03)
- 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 the amendment of the TennCare waiver, chapter 1200-13-13 TennCare Medicaid, 6 T.A.R. (June 2005) - Filed May 5, 2005; effective through October 17, 2005. (05-05)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility, chapter 1200-13-13 TennCare Medicaid, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding appeals, chapter 1200-13-13 TennCare Medicaid, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-10)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-04)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-05)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 26, 2005; effective through January 10, 2006. (07-43)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2006. (07-44)

PUBLIC NECESSITY RULES

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 6, 2005; effective through November 20, 2005. (07-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules deleting sections relating to the TennCare Partners State-Only Program, chapter 1200-13-13 TennCare Medicaid, 9 T.A.R. (September 2005) - Filed August 18, 2005; effective through January 30, 2005. (08-33)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-07)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2006. (07-45)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2006. (07-46)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 6, 2005; effective through November 20, 2005. (07-08)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity required to modify the current TennCare rules to reflect changes resulting from the Balanced Budget Act of 2003, chapter 1200-13-14 TennCare Standard, 6 T.A.R. (June 2005) - Filed May 5, 2005; effective through October 17, 2005. (05-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility and enrollment, chapter 1200-13-14 TennCare Standard, 7 T.A.R. (June 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-07)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility and appeals, chapter 1200-13-14 TennCare Standard, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-11)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Partners State-Only Program, chapter 1200-13-14 TennCare Standard, 9 T.A.R. (September 2005) - Filed August 18, 2005; effective through January 30, 2006. (08-34)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding Medical Cost Containment Program, chapter 0800-2-17 Medical Cost Containment Program, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-14)

PUBLIC NECESSITY RULES

- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding, chapter 0800-2-18 Medical Fee Schedule, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-15)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding In-patient fees, chapter 0800-2-19 In-Patient Hospital Fee Schedule, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-16)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding medical impairment rating, chapter 0800-2-20 Medical Impairment Rating Registry Program, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-20)
- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules required in order to maintain compliance with federal requirements, chapter 1240-2-2 Forms for Income Assignments, 6 T.A.R. (June 2005) - Filed May 20, 2005; effective through November 1, 2005. (05-20)
- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules dealing with Child support obligations, 1240-2-2 Forms for Income Assignments, 6 T.A.R. (June 2005) - Filed May 20, 2005; effective through November 1, 2005. (05-21)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity Rules concerning standard of need/income, chapter 1240-1-50 Financial Eligibility Requirements Family First Program, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-01)
- 1540 - TN Higher Education Commission - Public Necessity Rules concerning tuition and fee waiver, chapter 1540-1-4 Public Higher Education Fee Waivers for State Employees, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-02)
- 1540 - TN Higher Education Commission - Public Necessity Rules concerning tuition and fee waiver, chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-04)

PUBLIC NECESSITY RULES

**THE DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE**

**STATEMENT OF NECESSITY REQUIRING
PUBLIC NECESSITY RULES**

Pursuant to Tenn. Code Ann. § 4-5-209, the Commissioner of the Department of Commerce and Insurance is authorized to promulgate public necessity rules in the event that the rules are required by an agency of the federal government and adoption of the rules through ordinary rulemaking procedures might jeopardize the loss of a federal program or federal funds. With the passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, 117 Stat. 2066 (2003) (MMA), there is an immediate need for this state to amend its Medigap regulations in order to maintain its regulatory program's certification with the Department of Health and Human Services. The regulatory scheme for Medigap coverage is a complex one, with states retaining authority over this type of insurance product as long as their respective regulatory programs meet the minimum standards set forth by both the National Association of Insurance Commissioners' (NAIC) Medicare Supplement Insurance Minimum Standards Model Act and its companion Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act as authorized by federal law. The MMA impacts state Medigap regulations in many significant ways, with severe consequences for non-compliance. The MMA authorizes the Secretary of the U.S. Department of Health and Human Services to impose its own regulatory scheme for Medigap plans in the event that states do not implement the provisions of the MMA by September 8, 2005. As such, ordinary rulemaking procedures are not suitable to adopt these amendments within the time prescribed by the federal law. The Department of Commerce and Insurance has also filed a Notice of Rulemaking Hearing to adopt the provisions contained in these public necessity rules as permanent rules.

For a copy of the entire text of this notice contact: John F. Morris, Staff Attorney, 500 James Robertson Parkway, Fifth Floor, Davy Crockett Tower, Nashville, Tennessee 37243, Department of Commerce and Insurance, Telephone (615) 741-2199.

Paula A. Flowers
Commissioner
Tennessee Department of Commerce and Insurance

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE**

**CHAPTER 0780-1-58
MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS
AMENDMENTS**

Chapter 0780-1-58 Medicare Supplement Insurance Minimum Standards is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-58
MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS**

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0780-1-58-.01 PURPOSE.

The purpose of this Chapter is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

Authority: *T.C.A. §§ 56-2-301, 56-7-1425 through 1430, and 56-7-1451 through 56-7-1459.*

0780-1-58-.02 AUTHORITY.

This Chapter is issued pursuant to the authority vested in the Commissioner under T.C.A. § 56-2-301, the Medicare Supplemental Insurance Protection Act, Tenn. Code Ann. §§ 56-7-1425 through 1430, and Tenn. Code Ann. §§ 56-7-1451 through 1459.

Authority: *T.C.A. §§ 56-2-301, 56-7-1425 through 1430, and 56-7-1451 through 56-7-1459.*

0780-1-58-.03 APPLICABILITY AND SCOPE.

- (1) Except as otherwise specifically provided in Rules .07, .13, .14, .17, and .22 of this Chapter, this Chapter shall apply to:
 - (a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this Chapter; and
 - (b) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.
- (2) This Chapter shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Authority: *T.C.A. §§ 56-2-301, 56-7-1425 through 1430, and 56-7-1451 through 56-7-1459.*

0780-1-58-.04 DEFINITIONS.

For purposes of this Chapter:

- (1) "Applicant" means:
 - (a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and
 - (b) In the case of a group Medicare supplement policy, the proposed certificate holder.

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- (2) "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.
- (3) "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.
- (4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.
- (5) "CMS" means the Centers for Medicare & Medicaid Services.
- (6) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (7) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of coverage the individual had no breaks in coverage greater than sixty-three (63) days.
- (8) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:
 - 1. A group health plan;
 - 2. Health insurance coverage;
 - 3. Part A or Part B of Title XVIII of the Social Security Act (Medicare);
 - 4. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;
 - 5. Chapter 55 of Title 10 United States Code (CHAMPUS);
 - 6. A medical care program of the Indian Health Service or of a tribal organization;
 - 7. A State health benefits risk pool;
 - 8. A health plan offered under Chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);
 - 9. A public health plan as defined in federal regulation; and
 - 10. A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).
- (b) "Creditable coverage" shall not include one or more, or any combination of the following:
 - 1. Coverage only for accident or disability income insurance, or any combination thereof;
 - 2. Coverage issued as a supplement to liability insurance;

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3. Liability insurance, including general liability insurance and automobile liability insurance;
 4. Workers' compensation or similar insurance;
 5. Automobile medical payment insurance;
 6. Credit-only insurance;
 7. Coverage for on-site medical clinics; and
 8. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
- (c) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:
1. Limited scope dental or vision benefits;
 2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
 3. Such other similar, limited benefits as are specified in federal regulations.
- (d) "Creditable coverage" shall not include the following benefits if offered as independent, non-coordinated benefits:
1. Coverage only for a specified disease or illness; and
 2. Hospital indemnity or other fixed indemnity insurance.
- (e) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:
1. Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;
 2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
 3. Similar supplemental coverage provided to coverage under a group health plan.
- (9) "Department" means the Tennessee Department of Commerce and Insurance.
- (10) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).
- (11) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

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- (12) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.
- (13) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.
- (14) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859 found in Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:
 - (a) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
 - (b) Medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and
 - (c) Medicare Advantage private fee-for-service plans.
- (15) "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Sections 1395, et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.
- (16) "NAIC" means the National Association of Insurance Commissioners.
- (17) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.
- (18) "Secretary" means the Secretary of the United States Department of Health and Human Services.

Authority: T.C.A. §§ 56-2-301, 56-7-1425 through 1430, and 56-7-1451 through 56-7-1459.

0780-1-58-.05 POLICY DEFINITIONS AND TERMS.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section.

- (1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

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- (a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
 - (b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.
- (2) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.
- (3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.
- (4) "Health care expenses" means, for purposes of Rule 0780-1-58-.14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.
- (5) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.
- (6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.
- (7) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.
- (8) "Physician" shall not be defined more restrictively than as defined in the Medicare program.
- (9) "Sickness" shall not be defined to be more restrictive than the following:
 - (a) "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."
 - (b) The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Authority: T.C.A. § 56-7-1453(c).

0780-1-58-.06 POLICY PROVISIONS.

- (1) Except for permitted preexisting condition clauses as described in Rules 0780-1-58-.07(1)(a) and 0780-1-58-.08(1)(a), no policy or certificate may be advertised, solicited or issued for

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delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more than those of Medicare.

- (2) No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.
- (3) No Medicare supplement policy or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.
- (4)
 - (a) Subject to Rules 0780-1-58-.07(1)(d), (e) and (g), and 0780-1-58-.08(1)(d) and (e), a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.
 - (b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.
 - (c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:
 - 1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and
 - 2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

Authority: *T.C.A. § 56-7-1453(c) and (e).*

0780-1-58-.07 MINIMUM BENEFIT STANDARDS FOR POLICIES OR CERTIFICATES ISSUED FOR DELIVERY PRIOR TO JULY 1, 1992.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Chapter.
 - (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.
 - (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

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- (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and co-payment percentage factors. Premiums may be modified to correspond with such changes.
- (d) A “noncancellable,” “guaranteed renewable,” or “noncancellable and guaranteed renewable” Medicare supplement policy shall not:
 - 1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
 - 2. Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.
- (e)
 - 1. Except as authorized by the Commissioner, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
 - 2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Subparagraph (e)4. of this Paragraph, the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:
 - (i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and
 - (ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Rule 0780-1-58-.08(2).
 - 3. If membership in a group is terminated, the issuer shall:
 - (i) Offer the certificate holder the conversion opportunities described in Subparagraph (e)2. of this Paragraph; or
 - (ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
 - 4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
- (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be

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predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

- (g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this Rule.

(2) Minimum Benefit Standards.

- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) day in any Medicare benefit period;
- (b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
- (c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
- (d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days;
- (e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;
- (f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [\$100];
- (g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Authority: T.C.A. § 56-2-301.

0780-1-58-.08 BENEFIT STANDARDS FOR POLICIES OR CERTIFICATES ISSUED OR DELIVERED ON OR AFTER JULY 1, 1992.

The standards required by this Rule are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with the benefit standards set forth in this Rule.

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- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Chapter:
- (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.
 - (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
 - (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
 - (d) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.
 - (e) Each Medicare supplement policy shall be guaranteed renewable.
 - 1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.
 - 2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.
 - 3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph (e)5. of this Paragraph, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):
 - (i) Provides for continuation of the benefits contained in the group policy; or
 - (ii) Provides for benefits that otherwise meet the requirements of this subsection.
 - 4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:
 - (i) Offer the certificateholder the conversion opportunity described in Subpart (3) of this Subparagraph (e); or
 - (ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

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5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
 6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this Rule.
- (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.
- (g)
1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.
 2. If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.
 3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss.
 4. Reinstitution of coverages as described in Subparagraphs (g)1. and (g)2. of this Paragraph:
 - (i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

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- (ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and
- (iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Standards for Basic (Core) Benefits Common to Benefit Plans A – J.

Every issuer shall make available a policy or certificate including only the following basic “core” package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) day in any Medicare benefit period;
- (b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
- (c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;
- (d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
- (e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans B through J only as provided by Rule 0780-1-58-.09:

- (a) Medicare Part A Deductible. Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

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- (b) Skilled Nursing Facility Care. Coverage for the actual billed charges up to the coinsurance amount from the twenty-first (21st) day through the one hundredth (100th) day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.
- (c) Medicare Part B Deductible. Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
- (d) Eighty Percent (80%) of the Medicare Part B Excess Charges. Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
- (e) One Hundred Percent (100%) of the Medicare Part B Excess Charges. Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
- (f) Basic Outpatient Prescription Drug Benefit. Coverage for fifty percent (50%) of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.
- (g) Extended Outpatient Prescription Drug Benefit. Coverage for fifty percent (50%) of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.
- (h) Medically Necessary Emergency Care in a Foreign Country. Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.
- (i) Preventive Medical Care Benefit. Coverage for the following preventive health services not covered by Medicare:
 - 1. An annual clinical preventive medical history and physical examination that may include tests and services from Subpart 2. of this Subparagraph (i) and patient education to address preventive health care measures;
 - 2. Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

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Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

- (j) At-Home Recovery Benefit. Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

1. For purposes of this benefit, the following definitions shall apply:

- (i) "Activities of daily living" include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
- (ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.
- (iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.
- (iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one (1) visit.

2. Coverage Requirements and Limitations.

- (i) At-home recovery services provided must be primarily services which assist in activities of daily living.
- (ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
- (iii) Coverage is limited to:
 - (l) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

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- (II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40) per visit;
- (III) \$1,600 per calendar year;
- (IV) Seven (7) visits in any one (1) week;
- (V) Care furnished on a visiting basis in the insured's home;
- (VI) Services provided by a care provider as defined in this Rule;
- (VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;
- (VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

3. Coverage is excluded for:

- (i) Home care visits paid for by Medicare or other government programs; and
- (ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

(4) Standards for Plans K and L.

(a) Standardized Medicare Supplement Benefit Plan K shall consist of the following:

- 1. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first (61st) through the ninetieth (90th) day in any Medicare benefit period;
- 2. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first (91st) through the one hundred fiftieth (150th) day in any Medicare benefit period;
- 3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;
- 4. Medicare Part A Deductible. Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph (a)10. of this Paragraph;

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5. Skilled Nursing Facility Care. Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first (21st) day through the one hundredth (100th) day in the Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph (a)10. of this Paragraph;
6. Hospice Care. Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (a)10. of this Paragraph;
7. Coverage for fifty percent (50%) under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph (a)10. of this Paragraph;
8. Except for coverage provided in Subparagraph (a)10. of this Paragraph, coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph (a)10. of this Paragraph;
9. Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and
10. Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand (\$4000) dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(b) Standardized Medicare Supplement Benefit Plan L shall consist of the following:

1. The benefits described in Subparagraphs (a)1., 2., 3. and 9. of this Paragraph;
2. The benefits described in Subparagraphs (a)4., 5., 6., 7. and 8. of this Paragraph, but substituting seventy-five percent (75%) for fifty percent (50%); and
3. The benefit described in Paragraph (a)10., but substituting \$2,000 for \$4,000.

Authority: T.C.A. § 56-7-1453(c) and (e).

0780-1-58-.09 STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS.

- (1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Rule 0780-1-58-.8(2).

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- (2) No groups, packages or combinations of Medicare supplement benefits other than those listed in this rule shall be offered for sale in this state, except as may be permitted in Rule 0780-1-58-.09(7) and in Rule 0780-1-58-.10.
- (3) Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans A through L listed in this Rule and conform to the definitions in Rule 0780-1-58-.04. Each benefit shall be structured in accordance with the format provided in Rule 0780-1-58-.08(2) and (3) or (4) and list the benefits in the order shown in this subsection. For purposes of this Rule, "structure, language, and format" means style, arrangement and overall content of a benefit.
- (4) An issuer may use, in addition to the benefit plan designations required in Paragraph (3) of this Rule, other designations to the extent permitted by law.
- (5) Make-up of benefit plans:
 - (a) Standardized Medicare Supplement Benefit Plan A shall be limited to the basic (core) benefits common to all benefit plans, as defined in Rule 0780-1-58-.08(2).
 - (b) Standardized Medicare Supplement Benefit Plan B shall include only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible as defined in Rule 0780-1-58-.08(3)(a).
 - (c) Standardized Medicare Supplement Benefit Plan C shall include only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Rule 0780-1-58-.08(3)(a), (b), (c) and (h) respectively.
 - (d) Standardized Medicare Supplement Benefit Plan D shall include only the core benefit (as defined in Rule 0780-1-58-.08(2)), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Rule 0780-1-58-.08(3)(a), (b), (h) and (j) respectively.
 - (e) Standardized Medicare Supplement Benefit Plan E shall include only the following: The core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Rule 0780-1-58-.08(3)(a), (b), (h) and (i) respectively.
 - (f) Standardized Medicare Supplement Benefit Plan F shall include only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Rule 0780-1-58-.08(3)(a), (b), (c), (e) and (h) respectively.
 - (g) Standardized Medicare Supplement Benefit High Deductible Plan F shall include only one hundred percent (100%) of covered expenses following the payment of the annual High Deductible Plan F deductible. The covered expenses include the core

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benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Rule 0780-1-58-.08(3)(a), (b), (c), (e) and (h) respectively. The annual High Deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare Supplement Benefit Plan F policy, and shall be in addition to any other specific benefit deductibles. The annual High Deductible Plan F deductible shall be \$1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10).

- (h) Standardized Medicare Supplement Benefit Plan G shall include only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Rule 0780-1-58-.08(3)(a), (b), (d), (h) and (j) respectively.
- (i) Standardized Medicare Supplement Benefit Plan H shall consist of only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Rule 0780-1-58-.08(3)(a), (b), (f) and (h) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.
- (j) Standardized Medicare Supplement Benefit Plan I shall consist of only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Rule 0780-1-58-.08(3)(a), (b), (e), (f), (h) and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.
- (k) Standardized Medicare Supplement Benefit Plan J shall consist of only the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Rule 0780-1-58-.08(3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.
- (l) Standardized Medicare Supplement Benefit High Deductible Plan J shall consist of only one hundred percent (100%) of covered expenses following the payment of the annual High Deductible Plan J deductible. The covered expenses include the core benefit as defined in Rule 0780-1-58-.08(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Rule 0780-1-58-

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.08(3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual High Deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare Supplement Plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

- (6) The make-up of the two (2) Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) shall be as follows:
 - (a) Standardized Medicare Supplement Benefit Plan K shall consist of only those benefits described in Rule 0780-1-58-.08(4)(a); and
 - (b) Standardized Medicare Supplement Benefit Plan L shall consist of only those benefits described in Rule 0780-1-58-.08(4)(b).
- (7) New or Innovative Benefits. An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Authority: T.C.A. § 56-7-1453(c), (d) and (e).

0780-1-58-.10 MEDICARE SELECT POLICIES AND CERTIFICATES.

- (1)
 - (a) This Rule shall apply to Medicare Select policies and certificates, as defined in this Rule.
 - (b) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this Rule.
- (2) For the purposes of this Rule:
 - (a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.
 - (b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.
 - (c) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

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- (d) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.
 - (e) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.
 - (f) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.
 - (g) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.
- (3) The Commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this Rule and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the issuer has satisfied all of the requirements of this Chapter.
- (4) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the Commissioner.
- (5) A Medicare Select issuer shall file a proposed plan of operation with the Commissioner in a format prescribed by the Commissioner. The plan of operation shall contain at least the following information:
- (a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:
 - 1. Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.
 - 2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:
 - (i) To deliver adequately all services that are subject to a restricted network provision; or
 - (ii) To make appropriate referrals.
 - 3. There are written agreements with network providers describing specific responsibilities.
 - 4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.
 - 5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured

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under a Medicare Select policy or certificate. This Subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

- (b) A statement or map providing a clear description of the service area.
 - (c) A description of the grievance procedure to be utilized.
 - (d) A description of the quality assurance program, including:
 - 1. The formal organizational structure;
 - 2. The written criteria for selection, retention and removal of network providers; and
 - 3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.
 - (e) A list and description, by specialty, of the network providers.
 - (f) Copies of the written information proposed to be used by the issuer to comply with Paragraph (9) of this Rule.
 - (g) Any other information requested by the Commissioner.
- (6) (a) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner prior to implementing the changes. Changes shall be considered approved by the Commissioner after thirty (30) days unless specifically disapproved.
- (b) An updated list of network providers shall be filed with the Commissioner at least quarterly.
- (7) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:
- (a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and
 - (b) It is not reasonable to obtain services through a network provider.
- (8) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.
- (9) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:
- (a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:
 - 1. Other Medicare supplement policies or certificates offered by the issuer; and

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2. Other Medicare Select policies or certificates.
 - (b) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.
 - (c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.
 - (d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.
 - (e) A description of limitations on referrals to restricted network providers and to other providers.
 - (f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.
 - (g) A description of the Medicare Select issuer's quality assurance program and grievance procedure.
- (10) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Paragraph (9) of this Rule and that the applicant understands the restrictions of the Medicare Select policy or certificate.
- (11) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.
 - (a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.
 - (b) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.
 - (c) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.
 - (d) If a grievance is found to be valid, corrective action shall be taken promptly.
 - (e) All concerned parties shall be notified about the results of a grievance.
 - (f) The issuer shall report no later than each March 31st to the Commissioner regarding its grievance procedure. The report shall be in a format prescribed by the Commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

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- (12) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.
- (13)
 - (a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.
 - (b) For the purposes of this Paragraph, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Subparagraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.
- (14) Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this Rule should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.
 - (a) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.
 - (b) For the purposes of this Paragraph, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Subparagraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.
- (15) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Authority: T.C.A. § 56-7-1453(e).

0780-1-58-.11 OPEN ENROLLMENT.

- (1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the

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first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this Paragraph without regard to age.

- (2)
 - (a) If an applicant qualifies under Paragraph (1) of this Rule and submits an application during the time period referenced in Paragraph (1) of this Rule and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.
 - (b) If the applicant qualifies under Paragraph (1) of this Rule and submits an application during the time period referenced in Paragraph (1) of this Rule and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this Paragraph.
- (3) Except as provided in Paragraph (2) of this Rule and Rule 0780-1-58-.23, Paragraph (1) of this Rule shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

Authority: T.C.A. § 56-7-1453(b), (c) and (e).

0780-1-58-.12 GUARANTEED ISSUE FOR ELIGIBLE PERSONS.

- (1) Guaranteed Issue.
 - (a) Eligible persons are those individuals described in Paragraph (2) of this Rule who seek to enroll under the policy during the period specified in Paragraph (3) of this Rule, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.
 - (b) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Paragraph (5) of this Rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.
- (2) Eligible Persons.

An eligible person is an individual described in any of the following Subparagraphs:

 - (a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual.

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- (b) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:
1. The certification of the organization or plan has been terminated;
 2. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;
 3. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;
 4. The individual demonstrates, in accordance with guidelines established by the Secretary, that:
 - (i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or
 - (ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or
 5. The individual meets such other exceptional conditions as the Secretary may provide.
- (c)
1. The individual is enrolled with:
 - (i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);
 - (ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;
 - (iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or
 - (iv) An organization under a Medicare Select policy; and
 2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Rule 0780-1-58-.12(2)(b).

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- (d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:
 - 1. (i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or
 - (ii) Of other involuntary termination of coverage or enrollment under the policy;
 - 2. The issuer of the policy substantially violated a material provision of the policy; or
 - 3. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.
 - (e)
 - 1. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and
 - 2. The subsequent enrollment under Subparagraph (e)1. of this Paragraph is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or
 - (f) The individual, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in a Medicare Advantage plan under Part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment.
 - (g) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Paragraph (5)(d) of this Rule.
- (3) Guaranteed Issue Time Periods.
- (a) In the case of an individual described in Paragraph (2)(a) of this Rule, the guaranteed issue period begins on the later of:
 - 1. The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or

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2. The date that the applicable coverage terminates or ceases, and ends sixty-three (63) days thereafter.
 - (b) In the case of an individual described in Paragraphs (2)(b), (2)(c), (2)(e) or (2)(f) of this Rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated.
 - (c) In the case of an individual described in Paragraph (2)(d)1. of this Rule, the guaranteed issue period begins on the earlier of:
 1. The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and
 2. The date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated.
 - (d) In the case of an individual described in Paragraphs (2)(b), (2)(d)2., (2)(d)3., (2)(e) or (2)(f) of this Rule who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date.
 - (e) In the case of an individual described in Paragraph (2)(g) of this Rule, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty (60) day period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D.
 - (f) In the case of an individual described in Paragraph (2) of this Rule but not described in the preceding provisions of this Paragraph, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.
- (4) Extended Medigap Access for Interrupted Trial Periods.
- (a) In the case of an individual described in Paragraph (2)(e) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with an organization or provider described in Paragraph (2)(e)1. of this Rule is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Rule 0780-1-58-.12(2)(e);
 - (b) In the case of an individual described in Paragraph (2)(f) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with a plan or in a program described in Paragraph (2)(f) of this Rule is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Rule 0780-1-58-.12(2)(f); and

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- (c) For purposes of Paragraphs (2)(e) and (2)(f) of this Rule, no enrollment of an individual with an organization or provider described in Paragraph(2)(e)2. of this Rule, or with a plan or in a program described in Paragraph (2)(f) of this Rule, may be deemed to be an initial enrollment under this Paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

(5) Products to Which Eligible Persons are Entitled.

The Medicare supplement policy to which eligible persons are entitled under:

- (a) Rule 0780-1-58-.12(2)(a), (b), (c) and (d) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer.
- (b)
 - (i) Subject to Subpart (ii) of this Subparagraph, Rule 0780-1-58-.12(2)(e) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subparagraph (a) of this Rule;
 - (ii) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this Paragraph is:
 - (I) The Policy available from the same issuer but modified to remove outpatient prescription drug coverage; or
 - (II) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer.
- (c) Rule 0780-1-58-.12(2)(f) shall include any Medicare supplement policy offered by any issuer.
- (d) Rule 0780-1-58-.12(2)(g) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions.

- (a) At the time of an event described in Paragraph (2) of this Rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Rule, and of the obligations of issuers of Medicare supplement policies under Paragraph (1) of this Rule. Such notice shall be communicated contemporaneously with the notification of termination.
- (b) At the time of an event described in Paragraph (2) of this Rule because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the

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organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Rule 0780-1-58-.12(1). Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

Authority: T.C.A. § 56-7-1453(c).

0780-1-58-.13 STANDARDS FOR CLAIMS PAYMENT.

- (1) An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100-203) by:
 - (a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;
 - (b) Notifying the participating physician or supplier and the beneficiary of the payment determination;
 - (c) Paying the participating physician or supplier directly;
 - (d) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;
 - (e) Paying user fees for claim notices that are transmitted electronically or otherwise; and
 - (f) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.
- (2) Compliance with the requirements set forth in Paragraph (1) of this Rule shall be certified on the Medicare Supplement Refund Calculation Form made Appendix A to this Chapter.

Authority: T.C.A. § 56-7-1453(d).

0780-1-58.14 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM.

- (1) Loss Ratio Standards.
 - (a) 1. A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

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- (i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or
 - (ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies.
 - 2. Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:
 - (i) Home office and overhead costs;
 - (ii) Advertising costs;
 - (iii) Commissions and other acquisition costs;
 - (iv) Taxes;
 - (v) Capital costs;
 - (vi) Administrative costs; and
 - (vii) Claims processing costs.
 - (b) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Rule when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.
 - (c) Reserved.
 - (d) For policies issued prior to July 1, 1992 expected claims in relation to premiums shall meet:
 - 1. The originally filed anticipated loss ratio when combined with the actual experience since inception;
 - 2. The appropriate loss ratio requirement from Paragraphs (1)(a)1.(i) and (ii) when combined with actual experience beginning with April 28, 1996 to date; and
 - 3. The appropriate loss ratio requirement from Paragraphs (1)(a)1.(i) and (ii) over the entire future period for which the rates are computed to provide coverage.
- (2) Refund or Credit Calculation.

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- (a) An issuer shall collect and file with the Commissioner by May 31st of each year the data contained in the applicable reporting form contained in Appendix A to this Chapter for each type in a standard Medicare supplement benefit plan.
- (b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.
- (c) For the purposes of this Rule, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after April 28, 1996. The first report shall be due by May 31, 1998.
- (d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30th following the experience year upon which the refund or credit is based.

(3) Annual Filing of Premium Rates.

An issuer of Medicare supplement policies and certificates issued before or after the effective date of this Chapter in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state:

- (a)
 - 1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.
 - 2. An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the

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rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

3. If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this Rule.

- (b) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

- (4) Public Hearings.

The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of this Chapter if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the Commissioner.

Authority: T.C.A. §§ 56-2-301, 56-7-1453(e) and 56-7-1454.

0780-1-58-.15 FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES.

- (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by the Commissioner.
- (2) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.
- (3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner.
- (4) (a) Except as provided in Subparagraph (b) of this Paragraph, an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

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- (b) An issuer may offer, with the approval of the Commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:
 - 1. The inclusion of new or innovative benefits;
 - 2. The addition of either direct response or agent marketing methods;
 - 3. The addition of either guaranteed issue or underwritten coverage; and
 - 4. The offering of coverage to individuals eligible for Medicare by reason of disability.
 - (c) For the purposes of this Rule, a “type” means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.
- (5) (a) Except as provided in Subparagraph (a)1. of this Paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Chapter that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.
- 1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.
 - 2. An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a)1. of this Paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate.
- (b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this Paragraph.
 - (c) A change in the rating structure or methodology shall be considered a discontinuance under Subparagraph (a) of this Paragraph unless the issuer complies with the following requirements:
 - 1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.
 - 2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential which is in the public interest.

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- (6) (a) Except as provided in Subparagraph (b) of this Paragraph, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule 0780-1-58-.14.
- (b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.
- (7) An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this Chapter based upon a structure or methodology with any groupings of attained ages greater than one (1) year. The ratio between rates for successive ages shall increase smoothly as age increases.

Authority: T.C.A. §§ 56-7-1453(d) and (e), and 56-7-1454.

0780-1-58-.16 PERMITTED COMPENSATION ARRANGEMENTS.

- (1) An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than two hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.
- (2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.
- (3) No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.
- (4) For purposes of this Rule, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

Authority: T.C.A. § 56-7-1453(d).

0780-1-58-.17 REQUIRED DISCLOSURE PROVISIONS.

- (1) General Rules.
 - (a) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

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- (b) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.
 - (c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary” or words of similar import.
 - (d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as “Preexisting Condition Limitations.”
 - (e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.
 - (f)
 - 1. Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the NAIC and CMS and in a type size no smaller than twelve (12) point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this Chapter. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.
 - 2. For the purposes of this Rule, “form” means the language, format, type size, type proportional spacing, bold character, and line spacing.
- (2) Notice Requirements.
- (a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the Commissioner. The notice shall:

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1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and
 2. Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.
- (b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
- (c) The notices shall not contain or be accompanied by any solicitation.
- (3) MMA Notice Requirements.
- Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.
- (4) Outline of Coverage Requirements for Medicare Supplement Policies.
- (a) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and
- (b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:
- NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.
- (c) The outline of coverage provided to applicants pursuant to this section consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All Plans A–L shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.
- (d) The following items shall be included in the outline of coverage in the order prescribed below:

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[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page: 1 of 2
Benefit Plans _____ [insert letters of plans being offered]

These charts show the benefits included in each of the standard Medicare supplement plans. Every company must make available Plan A. Some plans may not be available in your state.

See Outlines of Coverage sections for details about ALL plans

Basic Benefits for Plans A - J:

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses) or copayments for hospital outpatient services.

Blood: First three (3) pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible	Part B Deductible
					Part B Excess (100%)	Part B Excess (100%)	Part B Excess (80%)	Part B Excess (100%)	Part B Excess (100%)	Part B Excess (100%)	Part B Excess (100%)
	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
		At-Home Recovery	At-Home Recovery			At-Home Recovery	At-Home Recovery	At-Home Recovery	At-Home Recovery	At-Home Recovery	At-Home Recovery
				Preventive Care NOT covered by Medicare						Preventive Care NOT covered by Medicare	Preventive Care NOT covered by Medicare

* Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same benefits as Plans F and J after one has paid a calendar year [\$1690] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses exceed [\$1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include the plan's separate foreign travel emergency deductible.

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[COMPANY NAME] Outline of Medicare Supplement Coverage-Cover Page 2

Basic Benefits for Plans K and L include similar services as Plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 50% Hospice cost-sharing 50% of Medicare-eligible expenses for the first three pints of blood 50% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 75% Hospice cost-sharing 75% of Medicare-eligible expenses for the first three pints of blood 75% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services
Skilled Nursing Coinsurance	50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance
Part A Deductible	50% Part A Deductible	75% Part A Deductible
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-Home Recovery		
Preventive Care NOT covered by Medicare		
	\$[4000] Out of Pocket Annual Limit***	\$[2000] Out of Pocket Annual Limit***

** Plans K and L provide for different cost-sharing for items and services than Plans A – J. Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare-approved amounts, called “Excess Charges”. You will be responsible for paying excess charges.

***The out-of-pocket annual limit will increase each year for inflation.
See Outlines of Coverage for details and exceptions.

PUBLIC NECESSITY RULES

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult Medicare and You for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this Chapter. An issuer may use additional benefit plan designations on these charts pursuant to Rule 0780-1-58-.09(4).]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

PUBLIC NECESSITY RULES

PLAN A

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$0 \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$[876](Part A deductible) \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 \$0 \$0	\$0 Up to \$[109.50] a day All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN A

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physi- cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs
BLOOD First 3 pints	\$0	All costs	\$0
Next \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment			
First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

PUBLIC NECESSITY RULES

PLAN B

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90 th day 91 st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876](Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100 th day 101 st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 \$0 \$0	\$0 Up to \$[109.50] a day All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN B

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs
BLOOD First 3 pints	\$0	All costs	\$0
Next \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment			
First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

PUBLIC NECESSITY RULES

PLAN C

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90th day 91 st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876](Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN C

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts*	\$0	\$[100] (Part B deductible)	\$0
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts*	\$0	All costs	\$0
	\$0	\$[100] (Part B deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment			
First \$[100] of Medicare Approved Amounts*	\$0	\$[100] (Part B deductible)	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0

OTHER BENEFITS—NOT COVERED BY MEDICARE

FOREIGN TRAVEL—			
NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PUBLIC NECESSITY RULES

PLAN D

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876] (Part A deductible) \$[219] a day \$[438] a day \$0 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	 All approved amounts All but \$[109.50] a day \$0	 \$0 Up to \$[109.50] a day \$0	 \$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN D

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 Generally 80%	 \$0 Generally 20%	 \$[100] (Part B deductible) \$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 \$0 80%	 All costs \$0 20%	 \$0 \$[100] (Part B deductible) \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PLAN D

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
AT-HOME RECOVERY SERVICES —NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
—Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
—Calendar year maximum	\$0	\$1,600	

PUBLIC NECESSITY RULES

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of charges	 \$0 \$0	 \$0 80% to a lifetime maximum benefit of \$50,000	 \$250 20% and amounts over the \$50,000 lifetime maximum

PUBLIC NECESSITY RULES

PLAN E

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90th day 91 st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$876 (Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100 th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN E

MEDICARE (PART B)—MEDICAL SERVICES—PER BENEFIT PERIOD

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 Generally 80%	 \$0 Generally 20%	 \$[100] (Part B deductible) \$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 \$0 80%	 All costs \$0 20%	 \$0 \$[100] (Part B deductible) \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment			
First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

PUBLIC NECESSITY RULES

PLAN E

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	 \$0 \$0	 \$0 80% to a lifetime maximum benefit of \$50,000	 \$250 20% and amounts over the \$50,000 lifetime maximum
*PREVENTIVE MEDICAL CARE BENEFIT—NOT COVERED BY MEDICARE Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges	 \$0 \$0	 \$120 \$0	 \$0 All costs

*Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

PUBLIC NECESSITY RULES

PLAN F OR HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
 [**This high deductible plan pays the same benefits as Plan F after one has paid a calendar year \$[1690] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are \$[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1690] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90 th day 91st day and after: While using 60 Lifetime reserve days Once lifetime reserve days Are used: Additional 365 days Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876] (Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0*** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101 st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs

PUBLIC NECESSITY RULES

BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

*** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN F OR HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[**This high deductible plan pays the same benefits as Plan F after one has paid a calendar year \$[1690] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are \$[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1690] DEDUCTIBLE,**] YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, Such as physician's Services, inpatient and Outpatient medical and Surgical services and Supplies, physical and Speech therapy, Diagnostic tests, Durable medical Equipment, First \$[100] of Medicare Approved amounts* Remainder of Medicare Approved amounts	 \$0 Generally 80%	 \$[100] (Part B deductible) Generally 20%	 \$0 \$0
Part B excess charges (Above Medicare Approved Amounts)	\$0	100%	\$0
BLOOD First 3 pints Next \$[100] of Medicare Approved amounts* Remainder of Medicare Approved amounts	 \$0 \$0 80%	 All costs \$[100] (Part B deductible) 20%	 \$0 \$0 \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PLAN F OR HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$[1690] DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$[1690] DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies —Durable medical equipment	100%	\$0	\$0
First \$[100] of	\$0	\$[100] (Part B deductible)	\$0
Medicare approved Amounts*	80%	20%	\$0
Remainder of Medicare approved Amounts			

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$[1690] DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$[1690] DEDUCTIBLE,** YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary Emergency care services Beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PUBLIC NECESSITY RULES

PLAN G

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876] (Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN G

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 Generally 80%	 \$0 Generally 20%	 \$[100] (Part B deductible) \$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	80%	20%
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 \$0 80%	 All costs \$0 20%	 \$0 \$[100] (Part B deductible) \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PLAN G

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
AT-HOME RECOVERY SERVICES —NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
—Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare-approved visits, not to exceed 7 each week	
—Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL —NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA	\$0	\$0	\$250
First \$250 each calendar year Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PUBLIC NECESSITY RULES

PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90th day 91 st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876] (Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN H

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 Generally 80%	 \$0 Generally 20%	 \$[100] (Part B deductible) \$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	0%	All Costs
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 \$0 80%	 All costs \$0 20%	 \$0 \$[100] (Part B deductible) \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment			
First \$[100] of Medicare Approved Amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

PLAN H

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL— NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PUBLIC NECESSITY RULES

PLAN I

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90th day 91 st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876] (Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance

** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN I

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 Generally 80%	 \$0 Generally 20%	 \$[100] (Part B deductible) \$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	100%	\$0
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 \$0 \$0 80%	 All costs \$0 20%	 \$0 \$[100] (Part B deductible) \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PLAN I

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies —Durable medical equipment First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$0 20%	\$0 \$[100] (Part B deductible) \$0
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan —Benefit for each visit —Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit) —Calendar year maximum	\$0 \$0 \$0	Actual charges to \$40 a visit Up to the number of Medicare-approved visits, not to exceed 7 each week \$1,600	Balance

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum

PUBLIC NECESSITY RULES

PLAN J OR HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[** This high deductible plan pays the same benefits as Plan J after one has paid a calendar year \$[1690] deductible. Benefits from high deductible Plan J will not begin until out-of-pocket expenses are \$[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1690] DEDUCTIBLE,** YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90th day 91 st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[876] (Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0*** All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101 st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[109.50] a day \$0	\$0 \$0 All costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0

*** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN J OR HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

* Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[**This high deductible plan pays the same benefits as Plan J after one has paid a calendar year \$[1690] deductible. Benefits from high deductible Plan J will not begin until out-of-pocket expenses are \$[1690]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1690] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1690] DEDUCTIBLE,**] YOU PAY
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	\$0	Balance
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 Generally 80%	\$[100] (Part B deductible) Generally 20%	\$0 \$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	100%	\$0
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$[100] (Part B deductible) 20%	\$0 \$0 \$0
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PUBLIC NECESSITY RULES

PLAN J OR HIGH DEDUCTIBLE PLAN J

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$[1690] DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$[1690] DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies —Durable medical equipment First \$[100] of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$[100] (Part B deductible) 20%	\$0 \$0 \$0
HOME HEALTH CARE (cont'd) AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan —Benefit for each visit —Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit) —Calendar year maximum	\$0 \$0 \$0	Actual charges to \$40 a visit Up to the number of Medicare Approved visits, not to exceed 7 each week \$1,600	Balance

PUBLIC NECESSITY RULES

PLAN J OR HIGH DEDUCTIBLE PLAN J

PARTS A & B

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$[1690] DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$[1690] DEDUCTIBLE,** YOU PAY
FOREIGN TRAVEL— NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of charges	\$0 \$0	\$0 80% to a lifetime maxi-mum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
***PREVENTIVE MEDICAL CARE BENEFIT—NOT COVERED BY MEDICARE Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges	\$0 \$0	\$120 \$0	\$0 All costs

***Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

PUBLIC NECESSITY RULES

PLAN K

* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[4000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called “Excess Charges”) and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61 st thru 90th day 91st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the additional 365 days	All but \$[876] All but \$[219] a day All but \$[438] a day \$0 \$0	\$[438](50% of Part A deductible) \$[219] a day \$[438] a day 100% of Medicare eligible expenses \$0	\$[438](50% of Part A deductible)♦ \$0 \$0 \$0*** All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital First 20 days 21 st thru 100th day 101st day and after	All approved amounts All but \$[109.50] a day \$0	\$0 Up to \$[54.75] a day \$0	\$0 Up to \$[54.75] a day ♦ All costs

PUBLIC NECESSITY RULES

BLOOD First 3 pints Additional amounts	\$0 100%	50% \$0	50%♦ \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	50% of coinsurance or copayments	50% of coinsurance or copayments♦

*** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN K

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts**** Preventive Benefits for Medicare covered services Remainder of Medicare Approved Amounts	 \$0 Generally 75% or more of Medicare approved amounts Generally 80%	 \$0 Remainder of Medicare approved amounts Generally 10%	 \$[100] (Part B deductible)**** ♦ All costs above Medicare approved amounts Generally 10% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs (and they do not count toward annual out-of-pocket limit of [\$4000])*
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts**** Remainder of Medicare Approved Amounts	 \$0 \$0 Generally 80%	 50% \$0 Generally 10%	 50%♦ \$[100] (Part B deductible)**** ♦ Generally 10% ♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$[4000] per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

PUBLIC NECESSITY RULES

PLAN K

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment			
First \$[100] of Medicare Approved Amounts****	\$0	\$0	\$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	80%	10%	10%♦

****Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

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PLAN L

* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[2000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called “Excess Charges”) and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but \$[876]	\$[657] (75% of Part A deductible) \$[219] a day	\$[219] (25% of Part A deductible)♦ \$0
61 st thru 90th day	All but \$[219] a day		
91st day and after: —While using 60 lifetime reserve days	All but \$[438] a day	\$[438] a day	\$0
—Once lifetime reserve days are used: —Additional 365 days	\$0	100% of Medicare eligible expenses	\$0***
—Beyond the additional 365 days	\$0	\$0	All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare’s requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital First 20 days	All approved amounts	\$0	\$0
21 st thru 100th day	All but \$[109.50] a day	Up to \$[82.13] a day	Up to \$[27.37] a day♦
101st day and after	\$0	\$0	All costs
BLOOD First 3 pints Additional amounts	\$0 100%	75% \$0	25%♦ \$0

PUBLIC NECESSITY RULES

HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	75% of coinsurance or copayments	25% of coinsurance or copayments ♦

*** NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PUBLIC NECESSITY RULES

PLAN L

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare Approved Amounts****	\$0	\$0	\$[100] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All costs (and they do not count toward annual out-of-pocket limit of [\$2000])*
BLOOD First 3 pints Next \$[100] of Medicare Approved Amounts****	\$0 \$0	75% \$0	25%♦ \$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$[2000] per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

PUBLIC NECESSITY RULES

PLAN L

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies	100%	\$0	\$0
—Durable medical equipment First \$[100] of Medicare Approved Amounts*****	\$0	\$0	\$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	80%	15%	5% ♦

*****Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

(5) Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

- (a) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Sections 1395, et seq.), disability income policy, or other policy identified in Rule 0780-1-58-.03(2), issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

“THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company.”

- (b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Paragraph (4)(a) of this Rule shall disclose, using the applicable statement in Appendix C to this Chapter, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Authority: T.C.A. §§ 56-7-1453(e), and 56-7-1455(b) and (d).

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0780-1-58-.18 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE.

- (1) Application forms shall include the statements and questions set forth in Appendix D of this Chapter designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.
- (2) Producers shall list the following health insurance policies they have sold to the applicant:
 - (a) All policies sold to the applicant which are still in force; and
 - (b) All policies sold to the applicant in the past five (5) years which are no longer in force.
- (3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.
- (4) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its producer, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the producer, except where the coverage is sold without a producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.
- (5) The notice required by Paragraph (4) of this Rule for an issuer shall be provided in a substantially similar form to Appendix E of this Chapter in no less than twelve (12) point type:
- (6) Paragraphs 1 and 2 of Appendix E (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Authority: T.C.A. §§ 56-7-1453(c) and (d), and 56-7-1455(e).

0780-1-58-.19 FILING REQUIREMENTS FOR ADVERTISING.

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner for review or approval by the Commissioner.

Authority: T.C.A. §§ 56-7-1431 and 1457.

0780-1-58-.20 STANDARDS FOR MARKETING.

- (1) An issuer, directly or through its producers, shall:

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- (a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
 - (b) Establish marketing procedures to assure excessive insurance is not sold or issued.
 - (c) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

“Notice to buyer: This policy may not cover all of your medical expenses.”
 - (d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.
 - (e) Establish auditable procedures for verifying compliance with this Paragraph.
- (2) In addition to the practices prohibited in T.C.A. § 56-8-104, the following acts and practices are unfair and/or deceptive, and, thus, prohibited:
- (a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.
 - (b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
 - (c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.
- (3) The terms “Medicare Supplement,” “Medigap,” “Medicare Wrap-Around” and words of similar import shall not be used unless the policy is issued in compliance with this Chapter.

Authority: T.C.A. §§ 56-7-1429, 1431, 1453(d), and 56-8-113.

0780-1-58-.21 APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE.

- (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.
- (2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

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- (3) An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

Authority: T.C.A. § 56-7-1453(c) and (d).

0780-1-58-.22 REPORTING OF MULTIPLE POLICIES.

- (1) On or before March 1st of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:
 - (a) The policy and certificate number; and
 - (b) Each policy or certificate's date of issuance.
- (2) The items set forth above must be grouped by individual policyholder.

Authority: T.C.A. § 56-7-1453(d).

0780-1-58-.23 PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES.

- (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
- (2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

Authority: T.C.A. § 56-7-1453(c).

0780-1-58-.24 SEVERABILITY.

If any provision of this Chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Authority: T.C.A. §§ 56-2-301, 56-7-1425 through 1430, and 56-7-1451 through 56-7-1459.

0780-1-58-.25 EFFECTIVE DATE.

All amendments to this Chapter removing or deleting a prescription drug benefit from an existing plan are effective on December 31, 2005 or such other time as mandated by the Secretary. All other amendments are effective as provided for by the Uniform Administrative Procedures Act, compiled in T.C.A. title 4, chapter 5.

Authority: T.C.A. §§ 56-2-301, 56-7-1425 through 1430, and 56-7-1451 through 56-7-1459.

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APPENDIX A

**MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR_____**

TYPE¹ _____ SMSBP² _____
 For the State of _____ Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____ Person Completing Exhibit _____
 Title _____ Telephone Number _____

Line		(a) Earned Premium ³	(b) Incurred Claims ⁴
1.	Current Year's Experience		
	a. Total (all policy years)		
	b. Current year's issues ⁵		
	c. Net (for reporting purposes = 1a-1b)		
2.	Past Years' Experience (all policy years)		
3.	Total Experience (Net Current Year + Past Year)		
4.	Refunds Last Year (Excluding Interest)		
5.	Previous Since Inception (Excluding Interest)		
6.	Refunds Since Inception (Excluding Interest)		
7.	Benchmark Ratio Since Inception (see worksheet for Ratio 1)		
8.	Experienced Ratio Since Inception (Ratio 2) $\frac{\text{Total Actual Incurred Claims (line 3, col. b)}}{\text{Total Earned Prem. (line 3, col. a) - Refunds Since Inception (line 6)}}$		
9.	Life Years Exposed Since Inception If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10.	Tolerance Permitted (obtained from credibility table)		

Medicare Supplement Credibility Table

Life Years Exposed	
Since Inception	Tolerance
10,000 +	0.0%
5,000 -9,999	5.0%
2,500 -4,999	7.5%
1,000 -2,499	10.0%
500 - 999	15.0%
If less than 500, no credibility.	

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only

2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for prestandardized plans

3 Includes Modal Loadings and Fees Charged

4 Excludes Active Life Reserves

5 This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

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MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR _____

TYPE¹ _____ SMSBP² _____
 For the State of _____ Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____ Person Completing Exhibit _____
 Title _____ Telephone Number _____

11. Adjustment to Incurred Claims for Credibility	
Ratio 3 = Ratio 2 + Tolerance	

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.
 If Ratio 3 is less than the Benchmark Ratio, then proceed.

12.	Adjusted Incurred Claims [Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6)] x Ratio 3 (line 11)	
13.	Refund = Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6) –[Adjusted Incurred Claims (line 12)/Benchmark Ratio (Ratio 1)]	

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund or credit against premiums to be used must be attached to this form.

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Signature

Name - Please Type

Title - Please Type

Date

**REPORTING FORM FOR THE CALCULATION OF BENCHMARK
RATIO SINCE INCEPTION FOR GROUP POLICIES
FOR CALENDAR YEAR _____**

TYPE¹ _____ SMSBP² _____
 For the State of _____ Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____ Person Completing Exhibit _____
 Title _____ Telephone Number _____

(a) ³	(b) ⁴ Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) ⁵ Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15+ ⁶		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

- Benchmark Ratio Since Inception: $(l + n)/(k + m)$: _____
- 1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
 2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.
 3 Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.).
 4 For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
 5 These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.
 6 To include the earned premium for all years prior to as well as the 15th year prior to the current year.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR _____

TYPE¹ _____ SMSBP² _____
 For the State of _____ Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____ Person Completing Exhibit _____
 Title _____ Telephone Number _____

(a) ³	(b) ⁴ Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) ⁵ Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15+ ⁶		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: $(l + n)/(k + m)$: _____

- 1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
- 2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.
- 3 Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.).
- 4 For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
- 5 These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.
- 6 To include the earned premium for all years prior to as well as the 15th year prior to the current year.

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APPENDIX B

FORM FOR REPORTING
MEDICARE SUPPLEMENT POLICIES

Company Name: _____

Address: _____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

Signature

Name and Title (please type)

Date

PUBLIC NECESSITY RULES

APPENDIX C

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for
Health Insurance Policies Sold to Medicare Beneficiaries
that Duplicate Medicare

1. Section 1882(d) of the federal Social Security Act [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).
3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.
7. The federal law does not preempt state laws that are more stringent than the federal requirements.
8. The federal law does not preempt existing state form filing requirements.
9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

PUBLIC NECESSITY RULES

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENTAL INSURANCE

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Original disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENTAL INSURANCE

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENTAL INSURANCE

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENTAL INSURANCE

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENTAL INSURANCE

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- hospice
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Original disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items & services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Original disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE

THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE

THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items & services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

PUBLIC NECESSITY RULES

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE

THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or your state senior insurance counseling program.

PUBLIC NECESSITY RULES

APPENDIX D

STATEMENTS AND QUESTIONS TO BE INCLUDED IN APPLICATION FORMS

STATEMENTS

- (1) You do not need more than one Medicare supplement policy.
- (2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
- (3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
- (4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
- (5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
- (6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

QUESTIONS

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an "X"]

To the best of your knowledge,

PUBLIC NECESSITY RULES

- (1) (a) Did you turn age sixty-five (65) in the last six (6) months?

Yes_____ No_____

- (b) Did you enroll in Medicare Part B in the last six (6) months?

Yes_____ No_____

- (c) If yes, what is the effective date? _____

- (2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes_____ No_____

If yes,

- (a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes_____ No_____

- (b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes_____ No_____

- (3) (a) If you had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START __/__/__ END __/__/__

- (b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes_____ No_____

- (c) Was this your first time in this type of Medicare plan?

Yes_____ No_____

- (d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes_____ No_____

- (4) (a) Do you have another Medicare supplement policy in force?

Yes_____ No_____

PUBLIC NECESSITY RULES

- (b) If so, with what company, and what plan do you have [optional for Direct Mailers]?

- (c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes____ No____

- (5) Have you had coverage under any other health insurance within the past sixty-three (63) days? (For example, an employer, union, or individual plan)

Yes____ No____

- (a) If so, with what company and what kind of policy?

- (b) What are your dates of coverage under the other policy?

START __/__/__ END __/__/__

(If you are still covered under the other policy, leave "END" blank.)

PUBLIC NECESSITY RULES

APPENDIX E

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
OR MEDICARE ADVANTAGE
[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

_____ Additional benefits.

_____ No change in benefits, but lower premiums.

_____ Fewer benefits and lower premiums.

_____ My plan has outpatient prescription drug coverage and I am enrolling in Part D.

_____ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. [optional only for Direct Mailers.]

_____ Other. (please specify) _____

1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

PUBLIC NECESSITY RULES

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of September, 2005, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the day of the 13th day of February, 2006. (09-03)

PUBLIC NECESSITY RULES

**THE 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.

The State of Tennessee received federal approval for certain amendments to the benefits covered under the amendments to the TennCare Demonstration Project (No. 11-W-0015 1/4). Approval of the project modification is granted under the authority of Section 1115 (a) of the Social Security Act. The amendments are approved through the period ending June 30, 2007. The TennCare program is a managed care program for both the Medicaid population and the expansion population.

This rule is being amended to point out that effective October 1, 2005, coverage of payments to reserve a level I (intermediate) bed during a recipient's temporary absence from a nursing facility is being reinstated with a limit of ten (10) days per state fiscal year.

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

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

BUREAU OF TENNCARE

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

AMENDMENTS

Subparagraphs (r), (u), and (v) of paragraph (1) of rule 1200-13-1-.03 Amount, Duration, and Scope of Assistance is deleted in their entirety and replaced with new subparagraphs which shall read as follows:

- (r) Intermediate Care Facility services for individuals age 65 or older in institutions for tuberculosis will be covered for those who require institutional health services below the level of care rendered in skilled nursing facilities.
- (u) Intermediate Care facility services for individuals age 65 or older in institutions for mental diseases will be covered for those who require institutional health services below the level of care rendered in skilled nursing facilities.
- (v) Intermediate Care Facility services other than services in an institution for tuberculosis or mental diseases will be covered.

Subparagraph (b) of paragraph (4) of rule 1200-13-1-.06 Provider Reimbursement is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) A Level 1 nursing facility (NF) shall be reimbursed in accordance with this paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:
 - 1. Effective October 1, 2005, reimbursement will be made for up to a total of 10 days per state fiscal year while the resident is hospitalized or absent from the facility on therapeutic leave. The following conditions must be met in order for a bed hold reimbursement to be made under this provision:
 - (i) The resident intends to return to the NF.
 - (ii) For hospital leave days:
 - (I) Each period of hospitalization is physician ordered and so documented in the patient's medical record in the NF; and
 - (II) The hospital provides a discharge plan for the resident.
 - (iii) Therapeutic leave days, when the resident is absent from the facility on a therapeutic home visit or other therapeutic absence, are provided pursuant to a physician's order.

PUBLIC NECESSITY RULES

- (iv) At least 85% of all other beds in the NF are occupied at the time of the hospital admission or therapeutic absence.

Subparagraph (c) of paragraph (32) of rule 1200-13-1-.06 Provider Reimbursement is deleted in its entirety and replaced with a new subparagraph (c) which shall read as follows:

- (c) An ICF/MR will be reimbursed in accordance with this paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:
 - 1. For days not to exceed 15 days per occasion while the recipient is hospitalized and the following conditions are met:
 - (i) The resident intends to return to the ICF/MR.
 - (ii) The hospital provides a discharge plan for the resident.
 - (iii) At least 85% of all other beds in the ICF/MR certified at the recipient's designated level of care (i.e., intensive training, high personal care or medical), when computed separately, are occupied at the time of hospital admission.
 - (iv) Each period of hospitalization must be physician ordered and so documented in the patient's medical record in the ICF/MR.
 - 2. For days not to exceed 60 days per state fiscal year and limited to 14 days per occasion while the recipient, pursuant to a physician's order, is absent from the facility on a therapeutic home visit or other therapeutic absence.

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

The Public Necessity rules set out herein were properly filed in the Department of State on the 26th day of September, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 10th day of March, 2006. (09-29)

PUBLIC NECESSITY RULES

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

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

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.

On September 6, 2005, the State of Tennessee was notified of federal approval of a State Plan Amendment allowing prescribed drug coverage for the Medically Needy beneficiaries who are age 21 and older who do not receive services in a Nursing Facility, an Intermediate Care Facility for the Mentally Retarded, or a Home and Community Based Services Waiver. Prescriptions are limited to five (5) per month, pursuant to which at least three (3) out of any five (5) prescriptions or refills must be generic.

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

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENT

(C) of part 21. of subparagraph (b) of paragraph (8) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new (C) which shall read as follows:

- (C) Effective September 1, 2005, notwithstanding the August 1, 2005, date referenced above, subject to (A) above, pharmacy services for non-pregnant adults aged 21 and older who

PUBLIC NECESSITY RULES

are eligible in the Medically Needy category are limited to five (5) prescriptions and/or refills per enrollee per month, of which no more than two (2) of the five (5) can be brand name drugs. As of September 1, 2005, additional drugs for individuals in (C) shall not be covered even if medically necessary. This includes drugs which have been prior authorized but not received as of September 1, 2005, and/or drugs for which the initial prescription but not all applicable refills, or the interim supply, but not the balance thereof, has been received as of September 1, 2005. Prescriptions shall be counted according to the principles set out in (B) above.

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 7th day of September, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 19th day of February, 2006. (09-12)

PUBLIC NECESSITY RULES

THE TENNESSEE HIGHER EDUCATION COMMISSION - 1540

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

The tuition discount at public postsecondary institutions for the children of public school teachers authorized by Tennessee Code Annotated Section 49-7-119 went into effect on July 1, 1990. Pursuant to Public Chapter 447, Acts of 2005, the Legislature expanded the scope of T.C.A. § 49-7-119 to include children of full time technology coordinators, and the Tennessee Higher Education Commission promulgated rules to incorporate this change. A public necessity rule is necessary to incorporate the statutory change so that the children of employees affected by this rule change will not be denied this benefit for the Fall 2005 semester.

For a copy of this public necessity rule, contact Rosie Padgett, Tennessee Higher Education Commission, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, telephone 615-741-3605.

Richard G. Rhoda, Executive Director
Tennessee Higher Education Commission

PUBLIC NECESSITY RULES OF THE TENNESSEE HIGHER EDUCATION COMMISSION

CHAPTER 1540-1-5 PUBLIC HIGHER EDUCATION FEE DISCOUNTS FOR CHILDREN OF LICENSED PUBLIC SCHOOL TEACHERS AND STATE EMPLOYEES

AMENDMENTS

Paragraph (2) of Rule 1540-1-5-.01 Definitions is amended by deleting the current language in its entirety and replacing it with the following language so that as amended the paragraph shall read:

1540-1-5-.01 DEFINITIONS

- (2) Certified teacher in any public school in Tennessee or Teacher: Teacher, supervisor, principal, superintendent and other personnel who is licensed by the Tennessee Department of Education or by a branch of the U.S. Armed Forces to teach Reserve Officer Training Corps, and employed by any local school system, for service in public, elementary and secondary schools in Tennessee supported in whole or in part by state funds. This term shall also include technology coordinators employed by any local school system, for service in public secondary schools in Tennessee supported in whole or in part by state funds.

Authority: Public Chapter 447, Acts of 2005 and T.C.A. § 49-7-119.

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of September, 2005 and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of February, 2006. (09-01)

PUBLIC NECESSITY RULES

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
MEDICAL SERVICES DIVISION**

**CHAPTER 1240-3-3
TECHNICAL AND FINANCIAL ELIGIBILITY
REQUIREMENTS FOR MEDICAID**

RESOURCE LIMITATIONS FOR CATEGORICALLY NEEDY

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

The TennCare Bureau ended further enrollment in certain Medically Needy Eligibility categories affecting persons receiving nursing facility services and certain other types of services.

Pursuant to final direction from the federal Centers for Medicare and Medicaid Services (CMS) on September 8, 2005, when this category is ended for persons receiving those types of services, the State is required to recognize properly established Qualified Income Trusts (QITs), also known as "Miller Trusts", pursuant to 42 U.S.C. § 1396p(d)(4)(B). This type of trust allows a person to transfer income to such a trust that is established under certain criteria established pursuant to that law. The income in such a qualified income trust will not be counted for income eligibility purposes or be considered as an improper transfer of income in determining eligibility for these types of services.

Under contract with the TennCare Bureau, the Tennessee Department of Human Services determines eligibility for applicants and enrollees in the TennCare/Medicaid program administered by the TennCare Bureau which includes those receiving nursing facility services and certain other types of services that would be affected by the federal directive.

In order to immediately implement the requirement of an agency of the federal government with regard to compliance with federal law and in order to permit this requirement to be effectively implemented under state law, the use of public necessity rules is necessary because the use of ordinary rulemaking procedures would be ineffective to avoid the possible loss of a critical federal program or federal funds that support such a program caused by failure to timely and effectively implement this federal requirement.

For a complete copy of these public necessity rules, contact: Phyllis Simpson, Assistant General Counsel, Tennessee Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
MEDICAL SERVICES DIVISION**

**CHAPTER 1240-3-3
TECHNICAL AND FINANCIAL ELIGIBILITY
REQUIREMENTS FOR MEDICAID**

AMENDMENTS

Rule 1240-3-3-.03, Resource Limitations For Categorically Needy, is amended by inserting a new Paragraph (7) and renumbering the current Paragraph (7) as Paragraph (8), so that, as amended the new Paragraph (7) shall read as follows:

(7) Qualified Income Trust (QIT).

- (a) Effective July 1, 2005, individuals who are receiving or will receive nursing facility services or home and community based services (HCBS) and whose income exceeds the Medicaid Income Cap (MIC) may establish an income trust, referred to as a Qualified Income Trust (QIT) or "Miller Trust". Funds placed in a QIT that meets the standards set forth in paragraph (7) are not treated as available resources or income for purposes of determining the individual's Medicaid eligibility.
- (b) A QIT is a trust consisting only of the individual's pension income, Social Security Income, and other monthly income that is created for the purpose of establishing income eligibility for Medicaid coverage when an individual is or soon will be confined to a nursing facility, HCBS or ICF/MR waiver program.
- (c) An individual is only eligible to establish a QIT if his or her income is above the level at which he or she would be financially eligible for nursing facility, HCBS, or ICF/MR care under Medicaid, but below the statewide average Nursing Facility (NF) private pay rate for Level 1 care.
 - 1. The initial average NF private rate will be computed by the Comptroller's Office based on data submitted to the Comptroller's Office in the most recent complete set of nursing facility cost reports. Beginning on July 1, 2006, this amount will be trended forward annually by the Medicare Economic Index (MEI).
 - 2. An individual whose income level would otherwise preclude establishment of a QIT under subparagraph (c) may, in the sole discretion of the Department of Human Services, be permitted to establish a QIT for purposes of meeting the Medicaid eligibility criteria, if denying the individual Medicaid eligibility would otherwise result in undue hardship. Undue hardship will be considered in circumstances where the individual's income is over the allowable limit to establish a QIT but below the cost of care at the private pay rate and there are no other resources available to the patient and discharge from the facility would endanger the patient's life and/or health.
- (d) A QIT must meet the following criteria:
 - 1. The trust must be irrevocable and cannot be modified or amended in whole or in part by the Grantor at any time. However, the Trustee or a court of competent jurisdiction shall

PUBLIC NECESSITY RULES

have the right and jurisdiction to modify any provision of the trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance.

2. Other than disbursements under Part 3 below, each month the Trustee may only make disbursements from the trust for:
 - (i) A personal needs allowance up to the amount recognized under Tennessee Medicaid policies. As of January 1, 2005, this amount is Forty Dollars (\$40) per month;
 - (ii) Up to Twenty Dollars (\$20) in necessary expenses for management of the trust (i.e., bank charges);
 - (iii) A spousal income allocation in the amount permitted under Tennessee Medicaid policies;
 - (iv) Expenses for health insurance premiums for health insurance coverage of the Grantor other than Medicaid; and
 - (v) Expenses for qualifying medical or remedial care received by the Grantor, to the extent such care is recognized under Tennessee law as provided in Department of Human Services State Rule 1240-3-3-.04(2)(d) but not covered as medical assistance under the State's Medicaid program.
3. Each month the Trustee shall distribute the entire amount of income remaining in the trust after any disbursements made under Part 2 above to the State of Tennessee, Bureau of TennCare (or directly to the nursing facility or HCBS provider, as directed by the Bureau of TennCare), up to the total amount of expenditures for medical assistance for the Grantor.
4. The sole beneficiaries of the trust are the Grantor for whose benefit the trust is established and the State of Tennessee (Bureau of TennCare). The trust terminates upon the death of the Grantor, or if the trust is no longer required to establish Medicaid eligibility in the State of Tennessee, if nursing facility or HCBS is no longer medically necessary for the Grantor, or if the Grantor is no longer receiving such services.
5. The trust must provide that upon the death of the Grantor or termination of the trust, whichever occurs sooner, the State of Tennessee (Bureau of TennCare) shall receive all amounts remaining in the trust up to the total amount of medical assistance paid by the State on behalf of the individual.
6. Amounts remaining in the trust that are owed to the State must be paid to the Bureau of TennCare within three (3) months after the death of the individual or termination of the trust, whichever is sooner, along with an accounting of the disbursements from the trust. The Bureau of TennCare may grant an extension if a written request is submitted within two months of the termination of the trust.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102 and 71-5-109; and 42 U.S.C. §§ 1396 et seq. and 42 U.S.C. § 1396p(d)(4)(B) and 42 U.S.C. § 1396p(d)(5).

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of September, 2005 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 14th day of March, 2006. (09-41)

RULEMAKING HEARINGS

THE TENNESSEE STATE BOARD OF ACCOUNTANCY - 0020

There will be a hearing before the Tennessee State Board of Accountancy to consider the promulgation of amendments of rules pursuant to T.C.A. § 62-1-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Room 640 of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 1:30 p.m. (Central Time) on the 18th day of November, 2005.

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 of 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, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Linda Biek, 500 James Robertson Parkway, 2nd Floor, Nashville, TN 37243-1141, Tennessee State Board of Accountancy, (615) 741-2550.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0020-1

BOARD OF ACCOUNTANCY, LICENSING AND REGISTRATION REQUIREMENTS

AMENDMENTS

Subparagraph (c) of paragraph (1) of rule 0020-1-.04 Fees is amended by deleting the text of the subparagraph and substituting instead the following so that, as amended, subparagraph (c) shall read:

(1) (c) Renewal of certificate or registration	Sixty dollars (\$60.00) per year or one hundred twenty dollars (\$120.00) biennially

Authority: T.C.A. § 62-1-105(e).

Rule 0020-1-.05 Applications is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-1-.05 APPLICATIONS.

- (1) Applications to take the Public Accountant Examination must be made on a form provided by the Board or its designee and filed with the Board or its designee by a due date specified by the Board or its designee in the application form. All applications for initial examination or reexamination shall be accompanied by the current fee being charged by the Board or such entity as is approved by the Board.

RULEMAKING HEARINGS

- (2) An application will not be considered filed until the application fee and examination fee required by these rules and all required supporting documents have been received, including proof of identity as determined by the Board and specified on the application form, official transcripts and proof that the candidate has satisfied the education requirement.
- (3) A candidate who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.
- (4) The Board or its designee will forward notification of eligibility for the computer-based examination to NASBA's National Candidate Database.

Authority: T.C.A. §§ 62-1-105(e) and 62-1-106.

Rule 0020-1-.06 Examinations is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-1-.06 EXAMINATIONS.

- (1) The examination required by T.C.A. §62-1-106(d) shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the Board may require.
- (2) Eligible candidates shall be notified of the time and place of the examination or shall independently contact the Board, or its designee, or a test center operator identified by the Board to schedule the time and place for the examination at an approved test site. Scheduling reexaminations must be made in accordance with (7) (a)2 below.
- (3) The Board shall cause the examination for certification to be graded by the AICPA. The Board may recognize the grades assigned by the AICPA. Applicants may request a grade review if the Board permits such, and the applicant pays whatever administrative charges that are assessed for a grade review.
- (4) A candidate shall be required to pass all test sections of the examination provided for in T.C.A. § 62-1-106(d) in order to qualify for a certificate. The uniform passing grade shall be established through a psychometrically acceptable standard-setting procedure and approved by the Board.
- (5) The notification given to the exam candidate regarding the grades and requirements that the candidate must achieve to pass a particular exam shall govern the grading of that exam.
- (6) All examination candidates who took a written examination prior to April, 2004 shall be required to pass all sections of the examination provided for in T.C.A. §62-1-106(d), in order to qualify for a certificate.
- (7) The following shall apply to the computer-based Uniform CPA Examination:
 - (a) Candidates may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for six (6) three-month exam cycles, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken the remaining test sections.

RULEMAKING HEARINGS

1. Candidates must pass all four (4) test sections of the Uniform CPA Examination within the next six (6) three-month exam cycles.
 2. Candidates cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month cycle in which candidates have an opportunity to take the CPA examination (comprised of two (2) months in which the examination is available to be taken and one (1) month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Candidates may take the examination for two (2) out of the three (3) months within an examination window.
 3. In the event a candidate does not pass all four (4) test sections of the Uniform CPA Examination within the next six (6) three-month cycles, credit for any test section(s) passed outside the six (6) three-month cycles will expire and that test section(s) must be retaken.
- (b) Candidates having earned conditional credits on the written examination, as of the start date of the computer-based Uniform CPA Examination, will retain conditional credits. "Conditional credits" means credits earned by a candidate from the written exam that are credited toward the computerized exam. The following conditional credits are for the corresponding test sections of the computer-based CPA examination:

Written Examination

Computer-based Examination

Auditing	=	Auditing and Attestation
Financial Accounting and Reporting (FARE)	=	Financial Accounting and Reporting (FAR)
Accounting and Reporting (ARE)	=	Regulation (REG)
Business Law and Professional	=	BUbusiness Environment and Concepts (BEC)

1. A candidates who has attained conditional credits as of the start date of the computer-based Uniform CPA Examination will be allowed a transition period to complete any remaining test sections of the CPA examination. The transition is the maximum number of opportunities remaining that candidates who have conditioned under the written examination have remaining, at the launch of the computer-based examination, to complete all remaining test sections, or the number of remaining opportunities under the written examination, multiplied by six (6) months, whichever is first exhausted. -
2. If a candidate with conditional credits does not pass all remaining test sections during the transition period, the conditional credits earned under the paper-and-pencil examination will expire and the candidate will lose credit for the test sections earned under the paper-and-pencil examination. Any test section(s) passed during the transition period is subject to the conditional provisions indicated in this section. However, a candidate with conditional credits will not lose credit for a test section of the computer-based examination that is passed during the transition period, even though more than six (6) three-month cycles may have elapsed from the date the test section is passed, until the end of the transition period.

RULEMAKING HEARINGS

- (c) A candidate shall retain credit for any and all test sections of an examination passed in another state if such credit would have been given, under then applicable requirements, if the candidate had taken the examination in this state.
 - (d) The Board may in particular cases extend the term of conditional credit notwithstanding the requirements of these rules, upon a showing that the credit was lost by reason of circumstances beyond the candidate's control.
 - (e) A candidate shall be deemed to have passed the Uniform CPA Examination once the candidate holds at the same time valid credit for passing each of the four (4) test sections of the examination. For purposes of this section, credit for passing a test section of the computer based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.
- (8) An applicant may be required to pass an examination covering the rules of ethics and professional conduct promulgated by the Board. Such examination may be part of the examination required in T.C.A. § 62-1-106(d) or may be a separate examination.
 - (9) The Board may provide for a third party administering the examination to charge each applicant a fee for each section of the examination or reexamination taken by the applicant.
 - (10) The candidate shall schedule each test section with the Board or its designee and pay a candidate testing fee that includes the actual fees charged by the AICPA, NASBA, and the Test Delivery Service Provider.
 - (11) Notwithstanding any other provisions under these rules, the Board may postpone scheduled examinations, release of grades, or the issuance of certificates due to a breach of examination security, unauthorized acquisition or disclosure of the contents of an examination, suspected or actual negligence, errors, omissions, or irregularities in conducting an examination, or for any other reasonable cause or unforeseen circumstance.

Authority: T.C.A. §§62-1-105(e)(9) and 62-1-106.

Subparagraph (a) of paragraph (2) of rule 0020-1-.07 Cheating is amended by deleting the text of the subparagraph, and by deleting the text of paragraph (5), and substituting instead the following, so that, as amended, subparagraph (2)(a) and paragraph (5) of rule 0020-1-.07 shall read:

0020-1-.07(2)(a)

- (2) (a) Falsifying or misrepresenting educational credentials, candidate identification, or other information required for admission to the examination;

0020-1-.07(5)

- (5) In any case where the Board or its representative permits a candidate to continue taking the examination, it may, depending on the circumstances:
 - (a) Admonish the candidate;
 - (b) Keep a record of the candidate's seat location and identifying information, and the names and identifying information of the candidates in close proximity of the candidate;

RULEMAKING HEARINGS

- (c) Notify the National Candidate Database and the AICPA and/or the test center of the circumstances, so that the candidate may be more closely monitored in future examination sessions.

Authority: T.C.A. §62-1-105.

Rule 0020-1-.08 Renewal of Licenses is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-1-.08 RENEWAL OF LICENSES.

- (1) All even numbered licenses shall expire on December 31 of each even numbered year and all odd numbered licenses shall expire on December 31 of each odd numbered year. All licenses may be renewed at any time during the month of December in the year in which they expire, by submitting to the Board a completed biennial renewal form and the appropriate fee. For the purpose of this rule the license ID number shall be used.
- (2) An individual or firm choosing not to renew his, her or its license shall notify the Board of his, her or its intention prior to the expiration of that license, and shall surrender the license to the Board immediately upon its expiration.
- (3) Applications for the renewal of certificates and registrations pursuant to the Act shall be made on a form provided by the Board and shall be filed no later than the expiration date set by these rules. Applications will not be considered filed until the applicable fee prescribed in these rules is received.
- (4) Applications for renewal of certificates or registrations shall be accompanied by evidence satisfactory to the Board that the applicant has complied with the continuing professional education requirements under T.C.A. § 62-1-107(d) and Chapter 0020-5 of the Board's rules.
- (5) The Board may request additional evidence from licensees for continuing professional education requirements including continuing professional education audits (which require CPE course completion documentation). Listings of CPE courses on renewal forms are required; however, the listings are not considered evidence for this rule.
- (6) Licensees that renew more than thirty-one (31) days but less than three (3) months following their expiration date will be assessed a late penalty.
- (7) Licensees that renew more than three (3) months but less than one (1) year after their expiration date will be assessed an additional late penalty.
- (8) Licenses not renewed within (1) year of the expiration date shall be deemed to have lapsed. Any individual desiring to reinstate a lapsed license shall comply with the requirements of paragraph four (4) of this rule and paragraph five (5) of rule 0020-5-.03. The CPE hours required to be completed to reinstate a lapsed license are considered penalty hours and may not be used to offset the CPE hours required for renewal of a license.

Authority: T.C.A. §§62-1-105, 62-1-107, 62-1-108, 62-1-109, and 62-1-111.

RULEMAKING HEARINGS

Rule 0020-1-.10 Reinstatement of Revoked or Suspended Licenses is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-1-.10 REINSTATEMENT OF REVOKED OR SUSPENDED LICENSES.

- (1) A certified public accountant or public accountant whose license has been revoked or suspended and who wishes to reinstate the license shall submit to the Board an application for reinstatement of such license accompanied by the appropriate fee.
- (2) Such application shall consist of a signed and acknowledged petition which shall set forth in full the circumstances surrounding the revocation or suspension of the applicant's license, the applicant's reasons for seeking reinstatement, and any other information the applicant wishes to bring to the attention of the Board.
- (3) Such application shall be submitted to the Board at its next meeting and evaluated and reviewed for presentation at the following meeting.
- (4) In considering an application the Board may consider all activities of the applicant since the revocation or suspension was imposed, the offense for which the applicant was disciplined, the applicant's activities during the time the license was in good standing, the applicant's rehabilitative efforts, the applicant's restitution to damaged parties in the matter for which the discipline was imposed, and the applicant's general reputation for truth and professional probity. The Board may also question the applicant, complainant or individual injured by the applicant.
- (5) After consideration of the applicant's petition, the Board may in its sound discretion reinstate any revoked or suspended license. The Board shall notify such applicant of its decision in writing.
- (6) The Board may impose appropriate terms and conditions for reinstatement of a license or modification of a revocation, suspension or probation.
- (7) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.
- (8) A certified public accountant or public accountant whose license has been suspended must meet all continuing professional education and renewal fee requirements during the term of the suspension.

Authority: T.C.A. §§62-1-105, 62-1-107(c), and 62-1-118.

Rule 0020-1-.11 Application and Renewal of CPA and PA Firm Permits is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-1-.11 APPLICATION AND RENEWAL OF CPA AND PA FIRM PERMITS.

- (1) Each CPA and/or PA firm providing accounting services or engaged in the practice of public accountancy in this state as a sole proprietorship, partnership or corporation of certified public accountants and/or public accountants shall obtain a permit from the Board for each office location for the ensuing calendar year. Applications for initial issuance and for renewal of permits pursuant to the Act shall be made on a form provided by the Board and, in the case of applications for renewal, shall be filed no earlier than two (2) months prior to and no later than the expiration date.

RULEMAKING HEARINGS

- (2) All CPA and PA firm permits shall expire annually on December 31. Initial applications and renewals will not be considered filed until the applicable fee and all required documents prescribed in these Rules are received by the Board. If an application for renewal is filed late, it shall also be accompanied by the appropriate late renewal penalty.
- (3) Initial applications and renewals for each office location shall disclose the following information and shall be signed by the resident manager of the office location.
 - (a) The name of the firm;
 - (b) The firm's organizational structure;
 - (c) The address of the office location;
 - (d) The name and address of each individual with an equity or voting interest in the firm;
 - (e) A listing of the percentage of equity ownership and voting rights of each owner of the firm;
 - (f) The percentage of time each non-CPA owner spends working at the firm;
 - (g) The name, address, and certificate number of each certified public accountant or public accountant employed at the office location;
 - (h) The name, address and certificate number of the resident manager of the office location;
 - (i) The name and certificate number of each person responsible for supervising or providing attest services as contemplated by T.C.A. § 62-1-108(c)(2). The firm's initial application must include a completed experience affidavit for each of these individuals; and
 - (j) The type of peer review program in which the firm participates along with a copy of the reviewer's report and the acceptance letter from the last review.
- (4) Every office location shall comply with the current statutes and rules of the Tennessee State Board of Accountancy.
- (5) This rule is applicable to offices located outside of this state where such offices are engaged in the practice of public accountancy as CPA firms in this state through any person(s) holding a reciprocal certificate.

Authority: T.C.A. §§62-1-105, 62-1-108, 62-1-111(a)(12) and 62-1-113.

Paragraph (1) of rule 0020-1-.12 Notification of Firm Changes is amended by deleting the text of the paragraph and substituting instead the following so that, as amended, paragraph (1) of rule 0020-1-.12 shall read:

- (1) Firms established pursuant to T.C.A. §§62-1-108 and/or 62-1-109 shall file with the Board a written notification of any of the following events concerning the practice of public accountancy within this State within thirty (30) days after its occurrence:
 - (a) Formation of a new firm;
 - (b) Addition of a partner, member or shareholder;
 - (c) Retirement, withdrawal or death of a partner, member, manager or shareholder;

RULEMAKING HEARINGS

- (d) Any change in the name of the firm;
- (e) Dissolution of the firm;
- (f) Change in the management of any office location registered in this State;
- (g) Establishment of a new office location providing accounting services in this state or the closing or change of address of an office location registered in this State; and
- (h) The occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the Act or these Rules.

Authority: T.C.A. §§62-1-105, 62-1-108, 62-1-111(a)(11) and 62-1-114(c).

Rule 0020-1-.13 Reciprocity and Substantial Equivalency is amended by deleting the text of the rule in its entirety and substituting instead the following, so that, as amended, the rule shall read:

0020-1-.13 INTERSTATE PRACTICE.

- (1) These rules provide two distinct routes for an individual already licensed in another state to be authorized to practice in this state. The applicable route depends upon whether the individual will establish a principal place of business in this state. An individual establishing a principal place of business in this state may qualify for a reciprocal license if the applicant has met the requirements of T.C.A. §62-1-107. An individual with a principal place of business in another state may offer or render services in this state if the applicant has met the requirements of T.C.A. §62-1-117.
- (2) Fees
 - (a) An individual intending to practice public accountancy in Tennessee under T.C.A. §62-1-117 shall make application and file a notice of such intent with the Board's designee, NASBA. The application shall be accompanied by the applicable nonrefundable fee.-
 - (b) Alternatively, an individual CPA may choose to file a notification form with the Board office, in lieu of obtaining a license, stating the intent to practice public accountancy in Tennessee. The individual CPA must be in good standing and licensed in any other state. The CPA may practice in this manner as long as the individual does not reside in Tennessee and pays the Board an annual fee as determined by the Board. Such individual shall comply with the law and rules of Tennessee and are subject to disciplinary action by the Board. Each notice shall be accompanied by the greater of a nonrefundable fee of fifty dollars (\$50.00) or an amount equal to that charged for the same privilege to the licensees of this state by the individual's state of licensure.
 - (c) An application for a reciprocal certificate shall be accompanied by a nonrefundable fee of one hundred dollars (\$100.00).
 - (d) The fee for issuance of an initial reciprocal certificate shall be one hundred dollars (\$100.00).
 - (e) The fee for biennial renewal of a reciprocal certificate shall be one hundred dollars (\$100.00).

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- (3) Holders of reciprocal certificates shall comply with the continuing education requirements contained in Chapter 0020-5, and shall comply with all other requirements of the statutes and rules governing the practice of public accountancy within the State of Tennessee.

Authority: T.C.A. §§62-1-105, 62-1-107, 62-1-110, 62-1-111, 62-1-114, and 62-1-117.

CHAPTER 0020-2 EDUCATIONAL AND EXPERIENCE REQUIREMENTS AMENDMENTS

Paragraphs (5) and (6) of rule 0020-2-.01 Recognized Colleges and Universities are amended by deleting the text of each paragraph in its entirety and substituting instead the following, so that, as amended, paragraphs (5) and (6) of rule 0020-2-.01 shall read:

- (5) If an applicant's degree was received at an accredited college or university as defined in paragraphs 3 and 4 of this rule, but the education program used to qualify the applicant included courses taken at either a two-year or non-accredited institution before or after graduation, such courses will be deemed to have been taken at the accredited institution from which the applicant's baccalaureate degree was received; provided, however, that the courses were either accepted by virtue of inclusion in an official transcript or by certification to the Board.
- (6) A graduate of a four-year degree-granting institution which was not accredited at the time the applicant's degree was received or at the time of filing the application will be recognized by the Board as a graduate of a four year accredited college or university, provided:
- (a) A credentials evaluation service approved by the Board certifies that the applicant's degree is equivalent to a degree from an accredited educational institution defined in subsection (3); or
 - (b)
 - 1. An accredited educational institution, as defined in paragraphs 2 and 3 of this rule, accepts the applicant's non-accredited baccalaureate degree for admission to a degree program;
 - 2. The applicant satisfactorily completes at least fifteen (15) semester or twenty-two (22) quarter hours in post-baccalaureate education at the accredited educational institution, of which at least nine (9) semester or thirteen (13) quarter hours shall be in accounting; and
 - 3. The accredited college or university certifies that the applicant is in good standing for continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

Authority: T.C.A. §§58-308, 62-1-105(e)(3), 62-1-106, and 62-1-111(12).

Rule 0020-2-.02 Education is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

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0020-2-.02 EDUCATION.

- (1) (a) An applicant will be deemed to have met the educational requirement if the applicant has earned a baccalaureate or higher degree from an accredited educational institution and obtained the minimum number of hours required by Tenn. Code Ann. § 62-1-106(c) which includes:
1. At least twenty-four (24) semester or thirty-six (36) quarter hours of accounting education including the elementary level;
 2. Not more than three (3) semester or four (4) quarter hours may be internship programs which may be applied to the twenty-four (24) semester hours or thirty-six (36) quarter hours in accounting; and
 3. At least twenty-four (24) semester or thirty-six (36) quarter hours in general business education in one (1) or more of the following:
 - (i) Algebra, Calculus, Statistics, Probability
 - (ii) Business Communication
 - (iii) Business Law
 - (iv) Economics
 - (v) Ethics
 - (vi) Finance
 - (vii) Management
 - (viii) Technology/Information Systems
 - (ix) Marketing
- (b) 1. For purposes of this rule, accounting hours, other than elementary courses, above the minimum requirement may be substituted for general business education.
2. For purposes of this rule, candidates must have at least twelve (12) semester or eighteen (18) quarter hours of accounting education and at least twelve (12) semester or eighteen (18) quarter hours of general business courses at the upper division level, junior level courses or higher.
3. For purposes of this rule, one (1) graduate hour from a recognized college or university will count as one and one half (1.5) credit hours.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-106.

Subparagraph (b) of paragraph (1) of rule 0020-2-.03 Experience is amended by deleting the text of the subparagraph in its entirety and replacing it with the following language so that, as amended, subparagraph (b) of paragraph (1) of rule 0020-2-.03 shall read:

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- (1) (b) The applicant shall have his or her experience verified to the Board by a licensee as defined in the Act or a licensee from another state. Acceptable experience shall include employment in industry, government, academia or public practice. In evaluating experience, the Board shall consider such factors as the complexity and diversity of the work.

Authority: T.C.A. §§62-1-105(e)(3), 62-1-106, 62-1-107, and 62-1-108.

CHAPTER 0020-3 RULES OF PROFESSIONAL CONDUCT

AMENDMENTS

Paragraph (1) of rule 0020-3-.02 Applicability is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (1) of rule 0020-3-.02 shall read:

- (1) The provisions of this Chapter shall apply to all professional services performed in the practice of public accountancy or in the provision of accounting services, and shall apply to all licensees except:
 - (a) Where the wording of a rule indicates otherwise; and
 - (b) That a licensee who is practicing public accountancy outside the United States will not be subject to disciplinary action by the Board for departing from any of the provisions of this chapter as long as the licensee's conduct is in accord with the standards of professional conduct applicable to the practice of public accountancy in the country in which the licensee is practicing. However, where a licensee's name is associated with financial statements under circumstances which would entitle the reader to assume that United States practices are followed, the licensee shall comply with rules within this chapter.

Authority: T.C.A. §§62-1-105 and 62-1-111.

Rule 0020-3-.03 Independence is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-3-.03 INDEPENDENCE.

A licensee in the performance of professional services, including those who are not members of the AICPA, shall conform to the independence standards established by the AICPA, and where applicable, the United States Securities and Exchange Commission, the General Accounting Office and other regulatory or professional standards setting bodies.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111.

Paragraphs (2), (3), (4) and (5) of rule 0020-3-.05 Contingent Fees, Commissions and Other Consideration are amended by deleting the text of the paragraphs in their entirety and substituting instead the following so that, as amended, paragraphs (2), (3), (4) and (5) of rule 0020-3-.05 shall read:

- (2) A licensee shall neither pay any consideration or commission to obtain a client nor accept any consideration or commission when the licensee or the licensee's firm also performs for that client the services listed in T.C.A. 62-1-122(1) through (3). This prohibition applies during the period in

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which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved in such listed services.

- (3) A licensee who is not prohibited by this rule from performing services for or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission shall disclose that fact, in compliance with the requirements of T.C.A. §62-1-122 and Rule 0020-3-.06, to any person to whom the licensee recommends or refers a product or service to which the commission or consideration relates.
- (4) Any licensee who accepts consideration or a commission for a referral fee shall disclose such acceptance or payment to the client in compliance with the requirements of T.C.A. §62-1-22 and Rule 0020-3-.06.
- (5) A licensee shall not receive or agree to receive a contingent fee from a client for the following:
 - (a) Performance of any professional services for a client for whom the licensee or person associated with the licensee performs any of the services listed in T.C.A. 62-1-123(b)(1)(A) through (C) ; or
 - (b) Preparation of an original tax return.

This prohibition applies during the period in which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved related to such services.

Authority: T.C.A. §§62-1-105, 62-1-111, 62-1-122 and 62-1-123.

Rule 0020-3-.06 Disclosures is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-3-.06 DISCLOSURES.

- (1) A licensee who is not prohibited from performing services or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission or other consideration shall disclose that fact in compliance with the requirements of this rule to any person to whom the licensee recommends or refers a product or service to which the commission relates.
- (2) Any licensee who accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of this rule.
- (3) Any licensee who directly or indirectly accepts or agrees to accept a contingent fee shall disclose the terms of such contingent fee to the client in compliance with the requirements of this rule.
- (4) The disclosure must:
 - (a) Be in writing and be clear and conspicuous;
 - (b) State the amount of the consideration or commission or the basis on which it will be computed; and

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- (c) Be made at or prior to the time of the recommendation or referral of the product or service for which consideration or commission is paid or prior to the client retaining the licensee to whom the client has been referred for which a referral fee is paid; or
 - (d) Be made prior to the time the licensee undertakes representation of or performance of the service upon which a contingent fee will be charged.
- (5) The following form may be used to comply with the disclosures required by this rule and Tenn. Code Ann. §§62-1-122 and 62-1-123. A form which contains additional information may be used by a licensee if the form includes the minimum disclosure requirements.

STATEMENT OF DISCLOSURE OF COMMISSIONS, CONTINGENT FEES, AND OTHER CONSIDERATION

Certified public accountants and public accountants are required by law to disclose to clients the receipt or payment of certain commissions and contingent fees.

The purpose of this disclosure statement is to acknowledge that proper disclosure has been made and that a copy of this statement has been provided to each of the signatories thereof.

I hereby acknowledge that on this _____ day of _____, 20____.

_____ has disclosed that he/she/the firm will receive/pay a
CPA/PA/Firm

commission/contingent fee/consideration of _____
AMOUNT

in relation to goods or services he/she/the firm has agreed to provide or recommend.

Client

CPA/PA/Firm (signature)

Date

Authority: T.C.A. §§62-1-105, 62-1-111, 62-1-122 and 62-1-123.

Rule 0020-3-.07 Competence is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-3-.07 COMPETENCE.

- (1) A licensee shall comply with the following standards and with any interpretations thereof by bodies designated by the AICPA, or by other entities having similar generally recognized authority.
 - (a) Professional Competence. Undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

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- (b) Due Professional Care. Exercise due professional care in the performance of professional services.
- (c) Planning and Supervision. Adequately plan and supervise the performance of professional services.
- (d) Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111.

Rule 0020-3-.08 Compliance with Standards is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-3-.08 COMPLIANCE WITH STANDARDS.

A licensee who performs attest, management consulting, tax, or other professional services shall comply with standards promulgated by the American Institute of Certified Public Accountants or by other entities having similar authority as recognized by the Board.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111.

Paragraph (1) of rule 0020-3-.09 Accounting Principles is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (1) of rule 0020-3-.09 shall read:

- (1) A licensee shall not:
 - (a) Express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles; or
 - (b) State that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles if such statements or data contain any departure from an accounting principle promulgated by bodies designated by the AICPA to establish such principles, which departure has a material effect on the statements or data taken as a whole.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111.

Subparagraphs (a) and (b) of paragraph (1) of rule 0020-3-.11 Records are amended by deleting the text of the subparagraphs in their entirety and substituting instead the following so that, as amended, subparagraphs (a) and (b) of paragraph (1) of rule 0020-3-.11 shall read:

- (1) A licensee shall, upon request made within a reasonable time, furnish to his or her client or former client:
 - (a) A copy of any report or other documentation belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client's custody. The licensee may make and retain copies of such documents when they form the basis for work performed by the licensee;

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- (b) Any accounting or other documents belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client's premises or received from the client's custody. The licensee may make and retain copies of such documents when they form the basis for work performed by the licensee; and

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-115.

Paragraph (1) of rule 0020-3-.12 Discreditable Acts is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (1) of rule 0020-3-.12 shall read:

- (1) A licensee shall not commit any act that reflects adversely on the profession.

Authority: T.C.A. §§62-1-105 and 62-1-111.

Rule 0020-3-.15 Firms is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-3-.15 FIRMS.

- (1) A CPA or PA firm name is misleading under § 62-1-113(i) if, among other things, its name:
 - (a) Implies the existence of a corporation when the firm is not a corporation;
 - (b) Implies the existence of a partnership when the firm is not a partnership;
 - (c) Is similar to or the same as existing fictitious names within the State of Tennessee;
 - (d) Tends to mislead regarding the nature of the business or the affiliation of the trade name user with another business entity;
 - (e) Contains more than one (1) fictitious name;
 - (f) Includes the name of an individual whose license has been suspended or revoked by the Board;
 - (g) Includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm; or
 - (h) Includes the name of a person who is not a CPA, if the title "CPAs" is included in the firm name.
- (2) A fictitious CPA or PA firm name (that is, one not consisting of the names or initials of one or more present or former partners, members or shareholders) may not be used by a CPA firm unless such name has been registered with and approved by the Board, and it is not false or misleading.
- (3) The Board may disapprove of the use of any fictitious name that falls within one (1) of the prohibitions listed in paragraph (1) of this rule or if it determines after notice and hearing that the trade name is deceptive.
- (4) A certified public accountant or public accountant may practice under his/her own name or that of inactive or deceased partners or shareholders who were certified public accountants or public

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accountants. A partner or shareholder surviving the death or withdrawal (unless (1)(f) applies) of all other partners or shareholders may continue to practice under the partnership or professional association name for up to two (2) years after becoming a sole practitioner.

- (5) When a firm name violation is determined to exist, the firm shall have sixty (60) days after notification by the Board to come into compliance with all applicable rules and statutes.

Authority: T.C.A. §§62-1-105, 62-1-108, 62-1-111 and 62-1-113(i).

Paragraph (1) of rule 0020-3-.16 Notification to the Board is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (1) of rule 0020-3-.16 shall read:

- (1) A licensee shall notify the Board in writing within thirty (30) days of any change of name, address and, in the case of individual licensees, change of employment.

Authority: T.C.A. §§62-1-105 and 62-1-111(a)(12)(c).

CHAPTER 0020-4 DISCIPLINARY ACTION AND CIVIL PENALTIES

AMENDMENTS

Paragraph (1) of rule 0020-4-.02 Civil Penalties is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (1) of rule 0020-4-.02 shall read:

- (1) The Tennessee State Board of Accountancy may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties for each separate violation of statutes, rules or orders enforceable by the Board in accordance with the following schedule:

<u>Violation</u>	<u>Penalty</u>
Tenn. Code Ann. § 62-1-111(a)(1)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(2)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(3)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(4)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(5)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(6)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(7)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(8)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(9)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(10)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(11)	\$0-\$1000
Tenn. Code Ann. § 62-1-111(a)(12)	\$0-\$1000

Authority: T.C.A. § 56-1-308, 62-1-105, 62-1-111, 62-1-111(a)(2) and 62-1-117.

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Subparagraph (c) of paragraph (1) of rule 0020-4-.03 Grounds for Discipline Against Licensees is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, subparagraph (c) of paragraph (1) of rule 0020-4-.03 shall read:

- (1) (c) Violations of the Act or of rules promulgated under the Act, include but are not limited to:
1. Using the CPA or PA title or providing attest services in this State without a certificate, registration or permit to practice or without properly qualifying to practice across state lines under the substantial equivalency provision of the Act;
 2. Using or attempting to use a certificate, registration or permit which has been surrendered, suspended or revoked;
 3. Making any false or misleading statement, in support of an application for a certificate, registration or a permit filed by another; and
 4. Failure of a licensee to provide any explanation requested by the Board regarding evidence submitted by the licensee in support of an application filed by another, or regarding a failure or refusal to submit such evidence;
 5. Failure by a licensee to furnish for inspection upon request by the Board or its representative documentation relating to any evidence submitted by the licensee in support of such an application;
 6. Failure to satisfy the continuing professional education requirements set out in the Act and/or failure to comply with the continuing education requirements of these rules;
 7. Failure to comply with professional standards as to the attest experience requirement for those who supervise attest engagements and/or sign reports on financial statements; or
 8. Failure to comply with the peer review requirements set out in the Act and these rules.

Authority: T.C.A. §§62-1-105, 62-1-111, 62-1-111(a)(2), 62-1-113 and 62-1-117.

CHAPTER 0020-5 CONTINUING EDUCATION

AMENDMENTS

Rule 0020-5-.02 Purpose is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

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0020-5-.02 PURPOSE.

The Tennessee Accountancy Act of 1998 mandates compliance with continuing education requirements as a prerequisite for renewal of licenses issued by the Board. The purposes of this chapter are to prescribe the basic continuing education requirements for present and future license holders; to establish standards by which continuing education programs will be evaluated for awarding of credit; and to assure compliance with the Act by requiring periodic reporting of educational achievements.

Authority: T.C.A. §§62-1-105(e)(3), 62-1-107, 62-1-108(a), 62-1-109(a)(3) and 62-1-111(a)(10).

Rule 0020-5-.03 Basic Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-5-.03 BASIC REQUIREMENTS.

- (1) A license holder seeking regular biennial renewal shall, as a prerequisite for such renewal, show that he or she has completed no less than eighty (80) hours of qualified continuing professional education during the two (2)-year period immediately preceding renewal, with a minimum of twenty (20) hours in each year with specifications as follows:
 - (a) All license holders shall complete at least forty (40) hours in the subject areas of accounting, accounting ethics, attest, taxation, or management advisory services;
 - (b) All license holders shall complete a board-approved four (4) hour ethics course designed to familiarize the licensee with the accountancy law and rules as well as professional ethics;
 - (c) License holders engaged in the attest function, shall biennially complete at least twenty (20) hours in the subject areas of attest and accounting theory and practice in fulfilling the above requirements;
 - (d) License holders engaged to testify in a Tennessee court(s) as expert witnesses in the areas of accounting, attest, management advisory services, or tax shall have completed, within the current or most recent renewal period, at least twenty (20) hours in the subject area(s) (as noted in this paragraph) concerning such expert testimony; and
 - (e) Up to forty (40) CPE hours taken in excess of the eighty (80) hour requirement for each two year period may be applied to the requirement of the next succeeding two year renewal cycle. License holders must maintain a list of CPE which will be used for carry forward and must submit that listing as requested by the Board. Failure to do so will result in the disallowance of carry-forward hours.
- (2) A license holder seeking to renew an initial certificate issued less than two (2) years but more than one (1) year prior to expiration must provide evidence of having completed at least forty (40) hours of continuing education, of which twenty (20) hours shall be in the subject areas of accounting, accounting ethics, attest, tax, or management advisory services. Licensees seeking to renew an initial certificate issued less than one year prior to expiration will be exempt from CPE requirements for that renewal period.
- (3) Upon application supported by such evidence as the Board may require, those licensees not practicing in Tennessee, who do not perform or offer to perform for the public one (1) or more kinds

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of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements or one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, may be exempted from any continuing professional education requirements provided that:

- (a) Licensees granted such an exemption must place the word "inactive" adjacent to their CPA title or PA title when used in any written form with the exception of their certificate or registration;
 - (b) Individuals exempt under this paragraph must complete eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services, during the twenty-four (24) month period preceding the date of their request for the reactivation of their license. The CPE hours required to reactivate a license may also be used as credit toward the renewal requirement so long as those hours are completed within the two (2) year window prior to the licensee's next December 31 renewal date.
- (4) Licensees who surrender their licenses in good standing may reactivate a license by complying with this subsection.
 - (5) Upon application supported by such evidence as the Board may require, licensees age seventy (70) and over, disabled for more than six (6) months or in active military service may be exempted from payment of a license renewal fee and/or CPE requirements so long as they do not practice public accountancy or offer accounting services to the public.
 - (6) An applicant for renewal whose license has lapsed as set forth under Rule 0020-1-.08(8) shall complete no less than eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services, during the six (6) month period preceding the date of reapplication. The CPE hours required to reinstate a lapsed license are considered penalty hours and may not be used to offset the CPE hours required for renewal of a license.
 - (7) A non-resident licensee seeking renewal of a license in this state shall meet the CPE requirement of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal office is located.
 - (a) Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal office is located by signing a statement certifying to that effect on the renewal application of this state.
 - (b) If the state in which a non-resident licensee's principal office is located has no CPE requirements for renewal of a license, the non-resident licensee must comply with all CPE requirements for renewal of a license in this state.

Authority: T.C.A. §§62-1-105(e)(3), 62-1-107, 62-1-111, 62-1-111(a)(12).

Paragraph (8) of rule 0020-5-.04 Qualifying Programs is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (8) of rule 0020-5-.04 shall read:

- (8) CPE credit may be allowed for the successful completion of exams for Certified Management Accountant (CMA), Certified Information Systems Auditor (CISA), as well as other similar exams approved by the Board. Credit will be awarded at a rate of five (5) times the length of each exam taken and limited to fifty percent (50%) of the total CPE required under Rule 0020-5-.03.

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Authority: T.C.A. §§62-1-105(e)(3) and 62-1-107.

Rule 0020-5-.05 Sponsors is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-5-.05 SPONSORS.

- (1) Prior to offering continuing education program(s), a sponsor who is not exempt under this rule must register as follows:
 - (a) Those sponsors offering program(s) which total more than sixteen (16) hours per year or offering program(s) more than five (5) times per year must register with the NASBA National Registry of CPE Sponsors.
 - (b) Those sponsors offering program(s) which total sixteen (16) hours or less per year or offering program(s) five (5) times or less per year must:
 1. Register with the NASBA National Registry of CPE Sponsors, or
 2. Register with the NASBA Tennessee Roster of CPE Sponsors.
- (2) The sponsor of each continuing education program registered with the NASBA National Registry or Tennessee Roster of CPE Sponsors shall comply with all requirements set forth by NASBA in order to maintain such registration.
- (3) The following are exempt from registering with either the NASBA National Registry or Tennessee Roster of CPE Sponsors:
 - (a) Professional accounting organizations [e.g. AICPA, Tennessee Society of Certified Public Accountants (TSCPA), Tennessee Association of Accountants (TAA), Institute of Management Accountants (IMA), or other similar organizations approved by the Board];
 - (b) Universities or colleges recognized under Rule 0020-2-.01;
 - (c) Firms or other entities offering organized in-firm or in-house educational programs for their employees and clients without charge;
 - (d) Governmental entities.
- (4) The sponsor of any continuing education program approved or exempted from registration by the Board must advise attendees of such approval or exemption, and issue to attendees certificates of completion that include:
 - (a) Sponsor name;
 - (b) Date(s) of training;
 - (c) Title of program;
 - (d) CPE subject code;
 - (e) CPE credit awarded.

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- (5) Those entities or organizations exempt from registration under paragraph (5) of this rule shall keep detailed records of the following for a period of five (5) years after the date of the presentation of the program:
- (a) The date and location of the program presentation;
 - (b) The name of each instructor or discussion leader;
 - (c) A list of license holders attending each program presentation;
 - (d) A written outline of the program presentation; and
 - (e) The number of continuing education hours allowable.
- (6) Approval of any continuing education program may be withdrawn by the Board if the sponsor of such program fails to comply with the provisions of this chapter.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-107.

Paragraph (1) of rule 0020-5-.07 Extension of Time is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (1) of rule 0020-5-.07 shall read:

- (1) The Board may, upon written request, extend the time up to six (6) months within which license holders must comply with the requirements of this chapter for reasons of poor health, military service, foreign residence or other good cause.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-107.

CHAPTER 0020-6 PEER REVIEW PROGRAM

AMENDMENTS

Rule 0020-6-.02 Purpose is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0020-6-.02 PURPOSE.

The purpose of the Peer Review Program (Program) is to improve the quality of financial reporting and to assure that the public can rely on the fairness of presentation of financial information on which licensees issue reports. Appropriate educational programs or rehabilitation procedures will ordinarily be recommended or required where professional services do not comply with applicable professional standards; however, when a licensee is unwilling or unable to comply with such standards, or a licensee's professional services are so egregious as to warrant disciplinary action, such action may be taken as the appropriate means of protecting the public interest.

RULEMAKING HEARINGS

Authority: T.C.A. §§62-1-105(e)(6), 62-1-111(a)(12) and (14) and 62-1-201.

Paragraph (1) of rule 0020-6-.03 Review Committee is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, the paragraph (1) of rule 0020-6-.03 shall read:

- (1) The Board shall appoint a peer review oversight committee (the Committee) to assist it in the implementation of the Program. The Committee shall be comprised of three licensees in good standing, one from each grand division of the state. Committee members shall serve for a term of three (3) years but may be reappointed by the Board at the end of each term.

Authority: T.C.A. §§62-1-105(e)(6), 62-1-111(a)(12) and (14) and 62-1-201.

Paragraphs (2) and (6) of rule 0020-6-.04 Basic Requirements are amended by deleting the text of the paragraphs in their entirety and substituting instead the following so that, as amended, paragraphs (2) and (6) of rule 0020-6-.04 shall read:

- (2) Each firm location that performs one (1) or more audit engagement(s) shall have an on-site peer review. Firm locations that perform only compilations or reviews in accordance with SSARS may have an off-site peer review.
- (6) Firm locations not providing attest services shall not be required to undergo a peer review.

Authority: T.C.A. §§62-1-105(e)(6) and 62-1-201.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of September, 2005. (09-42)

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 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 Tennessee Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 23rd day of November, 2005.

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-.03, Board Officers, Consultants, Records, and Meetings, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (9) and (10), so that as amended, the new catchline and the new paragraphs (9) and (10) shall read:

0460-1-.03 BOARD OFFICERS, CONSULTANTS, MEETINGS, AND SCREENING PANELS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (9) Declaratory Orders. The Board adopts, as if fully set out herein, Rule 1200-10-1-.11 of the Division of Health Related Boards, as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to the rule and not by the Division. Declaratory order petition forms can be obtained from the Board's Administrative office.
- (10) Screening Panels - The Board adopts, as if fully set out herein, Rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-223, 4-5-224, 4-5-225, 63-1-138, 63-5-105, 63-5-124, and Public Chapter 234 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 0460-1-.06, Disciplinary Actions, Civil Penalties, Procedures, Declaratory Orders, Assessment of Costs, and Subpoenas, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (6) in its entirety and renumbering the present paragraphs (7) and (8) as paragraphs (6) and (7), so that as amended, the new catchline shall read:

0460-1-.06 DISCIPLINARY ACTIONS, CIVIL PENALTIES, PROCEDURES, ASSESSMENT OF COSTS, AND SUBPOENAS.

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

Rule 0460-1-.08, Dental Professional Corporations (D.P.C.), is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), (3), (4), and (5) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (6) and (7), so that as amended, the new catchline and the new paragraphs (1), (2), (3), (4), and (5) shall read:

0460-1-.08 DENTAL PROFESSIONAL CORPORATIONS AND DENTAL PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Dental Professional Corporations (D.P.C.) – Except as provided in this rule Dental Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A D.P.C. need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – Only the following may form and own shares of stock in a foreign or domestic D.P.C. doing business in Tennessee:
 1. Dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 or licensed in another state; and/or
 2. A foreign or domestic general partnership, D.P.C. or Dental Limited Liability Company (D.P.L.L.C.) in which all partners, shareholders, members or holders of financial rights are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or dentists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed dentists.
 - (c) Officers and Directors of Dental Professional Corporations -
 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a dental professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.

RULEMAKING HEARINGS

2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a dental professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a D.P.C.
- (d) Practice Limitations
1. Engaging in, or allowing another dentist incorporator, shareholder, officer, or director, while acting on behalf of the D.P.C., to engage in, dental practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the unprofessional conduct enumerated in Rule 0460-1-.12 and/or Tennessee Code Annotated, Section 63-5-124 (a) (1).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a D.P.C.
 3. Nothing in these rules shall be construed as prohibiting a D.P.C. from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent dental judgment by the dentist incorporators, directors, officers, shareholders, employees or contractors of the D.P.C. who are practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
 4. Nothing in these rules shall be construed as prohibiting a dentist from owning shares of stock in any type of professional corporation other than a D.P.C. so long as such ownership interests do not interfere with the exercise of independent dental judgment by the dentist while practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
- (2) Dental Professional Limited Liability Companies (D.P.L.L.C.) - Except as provided in this rule Dental Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings - Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
- (b) Membership - Only the following may be members or holders of financial rights of a foreign or domestic D.P.L.L.C. doing business in Tennessee:
1. Dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5; and/or
 2. A foreign or domestic general partnership, D.P.C. or D.P.L.L.C. in which all partners, shareholders, members or holders of financial rights are either dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dental in Tennessee or dentists licensed by other states or composed of entities which are directly or indirectly owned by such licensed dentists.
- (c) Managers, Directors or Governors of a D.P.L.L.C.

RULEMAKING HEARINGS

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a dental professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 2. Only persons who are eligible to form or become members or holders of financial rights of a dental professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a D.P.L.L.C.
- (d) Practice Limitations
1. Engaging in, or allowing another dentist member, officer, manager, director, or governor, while acting on behalf of the D.P.L.L.C., to engage in, dental practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the unprofessional conduct enumerated in Rule 0460-1-.12 and/or Tennessee Code Annotated, Section 63-5-124 (a) (1).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a D.P.L.L.C.
 3. Nothing in these rules shall be construed as prohibiting a D.P.L.L.C. from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent dental judgment by the dentist members or holders of financial rights, governors, officers, managers, employees or contractors of the D.P.L.L.C. who are practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
 4. Nothing in these rules shall be construed as prohibiting a dentist from being a member of any type of professional limited liability company other than a D.P.L.L.C. so long as such membership interests do not interfere with the exercise of independent dental judgment by the dentist while practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
 5. All D.P.L.L.C.s formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a D.P.C. or a D.P.L.L.C. has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.

RULEMAKING HEARINGS

- (a) Service of a written notice of violation by the Board on the registered agent of the D.P.C. and/or D.P.L.L.C. or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
- (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
- (c) The notice of violation shall state that the D.P.C. and/or D.P.L.L.C. must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
- (d) The notice of violation shall state that, if the Board finds that the D.P.C. and/or D.P.L.L.C. is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
- (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the D.P.C. and/or D.P.L.L.C., through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
- (f) If, after the proceeding the Board finds that a D.P.C. and/or D.P.L.L.C. did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)-(3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (4) Violation of this rule by any physician individually or collectively while acting as a D.P.C. or as a D.P.L.L.C. may subject the dentist(s) to disciplinary action pursuant to Tennessee Code Annotated, Sections 63-5-124 (a) (1).
- (5) The authority to own shares of stock or be members or holders of financial rights in an D.P.C. or an D.P.L.L.C. granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-5-105, 63-5-107, 63-5-108, 63-5-110, 63-5-121, 63-5-124, and Public Chapter 286 of the Public Acts of 2005.

Rule 0460-2-.05, Examinations, is amended by deleting parts (1) (a) 2. and (1) (a) 4. in their entirety and renumbering the present part (1) (a) 3. as part (1) (a) 2.

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

RULEMAKING HEARINGS

Rule 0460-3-.05, Examinations, is amended by deleting parts (1) (a) 2. and (1) (a) 4. in their entirety and renumbering the present part (1) (a) 3. as part (1) (a) 2.

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

REPEAL

Rule 0460-1-.09 Dental Professional Limited Liability Companies (D.P.L.L.C.), is repealed.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of September, 2005. (09-26)

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 the hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq.

The hearing will take place in the Multi-Media Room, Tennessee Tower, 312 8th Avenue, North, Nashville, Tennessee 37243 on November 18, 2005, at 1:30 p.m.

Written comments will be included in the hearing records if received by the close of business on November 18, 2005 at the office of the 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 November 18, 2005 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. 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 Jeryl Stewart at 615-532-0605. 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.

SUBSTANCE OF PROPOSED CHANGES

CHAPTER 1200-3-3 AMBIENT AIR QUALITY STANDARDS

AMENDMENTS

Chapter 1200-3-3 is amended in the following two respects:

Paragraph 1200-3-3-.03(1) of chapter 1200-3-3 is amended by renumbering the existing language of Sub-paragraph 1200-3-3-.03(1)(b) as Part 1200-3-3-.03(1)(b)1. and:

Adding the following language as a new Part 1200-3-3-.03(1)(b)2.:

Sources that emit HF and that are within a source category (including sources that would otherwise be included in the source category but fall below emissions or size thresholds for the source category) for which the United States Environmental Protection Agency has promulgated standards under section 112 of the Clean Air Act are deemed to be in compliance with any requirements under this section if they meet any and all applicable requirements of the federal standards. This part is not applicable to sources subject to 40 CFR 63, Subpart LL.

RULEMAKING HEARINGS

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 30th day of September, 2005. (09-45)

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 an amendment 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 this hearing 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 Multimedia Room, Tennessee Tower, 312 8th ave Borth, Nashville, Tennessee 37243 at 9:30 a.m. on the 18th day of November, 2005.

Written comments will be included in the hearing records if received by the close of business on November 17, 2005, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on November 17, 2005.

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 November 17, 2005, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. 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.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-3-14 CONTROL OF SULFUR DIOXIDE EMISSIONS

NEW RULE

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1200-3-14-.04 CAIR SO₂ Annual Trading Program

1200-3-14-.04 CAIR SO₂ ANNUAL TRADING PROGRAM (40 CFR 96)

- (1) The provisions of 40 CFR Part 96 concerning the CAIR SO₂ Annual Trading Program are hereby adopted by reference with the following revisions:

- (a) (Reserved)

- (2) PART 96--CAIR SO₂ Annual Trading Program

Subpart AAA – CAIR SO₂ Trading Program General Provisions

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- 96.201 Purpose.
- 96.202 Definitions.
- 96.203 Measurements, abbreviations, and acronyms.
- 96.204 Applicability.
- 96.205 Retired unit exemption.
- 96.206 Standard requirements.
- 96.207 Computation of time.
- 96.208 Appeal Procedures.

Subpart BBB – CAIR Designated Representative for CAIR SO₂ Sources 96.210 Authorization and responsibilities of CAIR designated representative.

- 96.211 Alternate CAIR designated representative.
- 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
- 96.213 Certificate of representation.
- 96.214 Objections concerning CAIR designated representative.

Subpart CCC – Permits

- 96.220 General CAIR SO₂ Trading Program permit requirements.
- 96.221 Submission of CAIR permit applications.
- 96.222 Information requirements for CAIR permit applications.
- 96.223 CAIR permit contents and term.
- 96.224 CAIR permit revisions.

Subpart DDD – [Reserved]

Subpart EEE – [Reserved]

Subpart FFF – CAIR SO₂ Allowance Tracking System

- 96.250 [Reserved]
- 96.251 Establishment of accounts.
- 96.252 Responsibilities of CAIR authorized account representative.
- 96.253 Recordation of CAIR SO₂ allowances.
- 96.254 Compliance with CAIR SO₂ emissions limitation.
- 96.255 Banking.
- 96.256 Account error.
- 96.257 Closing of general accounts.

Subpart GGG – CAIR SO₂ Allowance Transfers

- 96.260 Submission of CAIR SO₂ allowance transfers.
- 96.261 EPA recordation.
- 96.262 Notification.

Subpart HHH – Monitoring and Reporting

- 96.270 General requirements.
- 96.271 Initial certification and recertification procedures.

RULEMAKING HEARINGS

- 96.272 Out of control periods.
- 96.273 Notifications.
- 96.274 Recordkeeping and reporting.
- 96.275 Petitions.
- 96.276 Additional requirements to provide heat input data.

Subpart III – CAIR SO₂ Opt-in Units

- 96.280 Applicability.
- 96.281 General.
- 96.282 CAIR designated representative.
- 96.283 Applying for CAIR opt-in permit.
- 96.284 Opt-in process.
- 96.285 CAIR opt-in permit contents.
- 96.286 Withdrawal from CAIR SO₂ Trading Program.
- 96.287 Change in regulatory status.
- 96.288 SO₂ allowance allocations to CAIR SO₂ opt-in units.

Subpart AAA – CAIR SO₂ Trading Program General Provisions

§ 96.201 Purpose.

This subpart and subparts BBB through III establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) SO₂ Trading Program, under section 110 of the Clean Air Act and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBB through III as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR SO₂ Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO₂ Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

RULEMAKING HEARINGS

Allocate or allocation means, with regard to CAIR SO₂ allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit and, with regard to CAIR SO₂ allowances issued under § 96.288, the determination by the permitting authority of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit.

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 CAIR SO₂ allowance transfer must be submitted for recordation in a CAIR SO₂ source's compliance account in order to be used to meet the source's CAIR SO₂ emissions limitation for such control period in accordance with § 96.254.

Alternate CAIR designated representative means, for a CAIR SO₂ source and each CAIR SO₂ 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 subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

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 authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB and III of this part, to transfer and otherwise dispose of CAIR SO₂ allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO₂ source and each CAIR SO₂ 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 subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

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CAIR NO_x 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 this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

CAIR NO_x 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 this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under § 96.104 and a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO₂ Trading Program requirements applicable to a CAIR SO₂ source, to each CAIR SO₂ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ allowance means a limited authorization issued by the Administrator under the Acid Rain Program, or by a permitting authority under § 96.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO₂ Trading Program as follows:

- (1) For one CAIR SO₂ allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 96.254(b);
- (2) For one CAIR SO₂ allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 96.254(b); and
- (3) For one CAIR SO₂ allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 96.254(b).
- (4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program or under the provisions of a State implementation plan that is approved under § 51.124(o)(1) or (2) of this chapter shall not be a CAIR SO₂ allowance.

CAIR SO₂ allowance deduction or deduct CAIR SO₂ allowances means the permanent withdrawal of CAIR SO₂ allowances by the Administrator from a compliance account in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO₂ units at a CAIR SO₂ source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO₂ Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO₂ allowances under the CAIR SO₂ Trading Program.

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This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO₂ allowances under the Acid Rain Program.

CAIR SO₂ Allowance Tracking System account means an account in the CAIR SO₂ Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO₂ allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO₂ allowances held or hold CAIR SO₂ allowances means the CAIR SO₂ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO₂ Allowance Tracking System account.

CAIR SO₂ emissions limitation means, for a CAIR SO₂ source, the tonnage equivalent of the CAIR SO₂ allowances available for deduction for the source under § 96.254(a) and (b) for a control period.

CAIR SO₂ source means a source that includes one or more CAIR SO₂ units.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO₂ unit means a unit that is subject to the CAIR SO₂ Trading Program under § 96.204 and, except for purposes of § 96.205, a CAIR SO₂ opt-in unit under subpart III of this part.

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.

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.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-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

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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 § 96.205.
 - (i) For a unit that is a CAIR SO₂ unit under § 96.204 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 CAIR SO₂ unit under § 96.204 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), (2), or (3) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO₂ unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO₂ unit under § 96.204.
 - (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), (2), or (3) of this definition as appropriate.
- (3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h), for a CAIR SO₂ opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the

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unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO₂ emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

- (i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.
- (4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

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 § 96.205.
 - (i) For a unit that is a CAIR SO₂ unit under § 96.204 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 CAIR SO₂ unit under § 96.204 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), (2), or (3) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO₂ unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR SO₂ unit under § 96.204.
 - (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),(2), or (3) of this definition as appropriate.

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- (3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h), for a CAIR SO₂ opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO₂ emissions rate and the heat input of the unit under § 96.284(b)(1)(i).
- (i) For a unit with a date for commencement of operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO₂ Allowance Tracking System account, established by the Administrator for a CAIR SO₂ source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO₂ source under subpart FFF or III of this part, in which any CAIR SO₂ allowance allocations for the CAIR SO₂ units at the source are initially recorded and in which are held any CAIR SO₂ allowances available for use for a control period in order to meet the source's CAIR SO₂ emissions limitation in accordance with § 96.254.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHH of this part 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 sulfur dioxide 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 continuous emission monitoring systems required under subpart HHH of this part:

- (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 standard cubic feet per hour (scfh);
- (2) A sulfur dioxide monitoring system, consisting of a SO₂ pollutant concentration monitor and an automated data acquisition handling system and providing a permanent, continuous record of SO₂ emissions, in parts per million (ppm);
- (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 H₂O;
- (4) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
- (5) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂ in percent O₂.

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Control period means the period beginning January 1 of a calendar year, except as provided in § 96.206(c)(2), 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 CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO₂ units at a CAIR SO₂ source during a control period that exceeds the CAIR SO₂ emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO₂ Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

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 CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part 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.

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.

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

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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 subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal SO₂ emissions limitation means, with regard to a unit, the lowest SO₂ emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, 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 CAIR SO₂ unit or a CAIR SO₂ source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

- (1) With regard to a CAIR SO₂ source or a CAIR SO₂ unit at a source, respectively:
 - (i) Any holder of any portion of the legal or equitable title in a CAIR SO₂ unit at the source or the CAIR SO₂ unit;
 - (ii) Any holder of a leasehold interest in a CAIR SO₂ unit at the source or the CAIR SO₂ unit; or
 - (iii) Any purchaser of power from a CAIR SO₂ unit at the source or the CAIR SO₂ 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 CAIR SO₂ unit; or
- (2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO₂ allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO₂ 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 CAIR SO₂ Trading Program in accordance with subpart CCC of this part 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.

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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 CAIR SO₂ allowances, the movement of CAIR SO₂ allowances by the Administrator into or between CAIR SO₂ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR SO₂ allowance, the unique identification number assigned to each CAIR SO₂ 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 Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR SO₂ Trading Program pursuant to § 51.124 (o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

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- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act 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 Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO₂ emissions limitation, total tons of sulfur dioxide 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 subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

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, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device. 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 heating 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.

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§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.

CO₂-carbon dioxide.

NO_x-nitrogen oxides.

hr-hour.

kW-kilowatt electrical.

kWh-kilowatt hour.

mmBtu-million Btu.

MWe-megawatt electrical.

MWh-megawatt hour.

O₂-oxygen.

ppm-parts per million.

lb-pound.

scfh-standard cubic feet per hour.

SO₂-sulfur dioxide.

H₂O-water.

yr-year.

§ 96.204 Applicability.

The following units in a State shall be CAIR SO₂ units, and any source that includes one or more such units shall be a CAIR SO₂ source, subject to the requirements of this subpart and subparts BBB through HHH of this part:

- (a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine 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) For 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.

§ 96.205 Retired unit exemption.

- (a)
 - (1) Any CAIR SO₂ unit that is permanently retired and is not a CAIR SO₂ opt-in unit under subpart III of this part shall be exempt from the CAIR SO₂ Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(4) through (8), § 96.207, and subparts BBB, FFF, and GGG of this part.
 - (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO₂ unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting

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authority otherwise responsible for administering any CAIR 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 subpart CCC of this part 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 sulfur dioxide, starting on the date that the exemption takes effect.
- (2) 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.
- (3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO₂ Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
- (4) A unit 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 CAIR designated representative of the source submits a complete CAIR permit application under § 96.222 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.
- (5) 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 CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, 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.

§ 96.206 Standard requirements.

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(a) Permit Requirements.

- (1) The CAIR designated representative of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall:
 - (i) Submit to the permitting authority a complete CAIR permit application under § 96.222 in accordance with the deadlines specified in § 96.221; and
 - (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
- (2) The owners and operators of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.
- (3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO₂ source that is not otherwise required to have a title V operating permit and each CAIR SO₂ unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO₂ source and such CAIR SO₂ unit.

(b) Monitoring, reporting, and recordkeeping requirements.

- (1) The owners and operators, and the CAIR designated representative, of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.
- (2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO₂ source with the CAIR SO₂ emissions limitation under paragraph (c) of this section.

(c) Sulfur dioxide emission requirements.

- (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control period, as determined in accordance with § 96.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO₂ units at the source, as determined in accordance with subpart HHH of this part.
- (2) A CAIR SO₂ unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270(b)(1),(2), or (5) and for each control period thereafter.
- (3) A CAIR SO₂ 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 CAIR SO₂ allowance was allocated.

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- (4) CAIR SO₂ allowances shall be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.
 - (5) A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.205 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 CAIR SO₂ allowance does not constitute a property right.
 - (7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR SO₂ unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR SO₂ unit.
- (d) Excess emissions requirements. If a CAIR SO₂ source emits sulfur dioxide during any control period in excess of the CAIR SO₂ emissions limitation, then:
- (1) The owners and operators of the source and each CAIR SO₂ unit at the source shall surrender the CAIR SO₂ allowances required for deduction under § 96.254(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
 - (2) Each ton 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.
- (e) Recordkeeping and reporting requirements.
- (1) Unless otherwise provided, the owners and operators of the CAIR SO₂ source and each CAIR SO₂ 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 § 96.213 for the CAIR designated representative for the source and each CAIR SO₂ 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 § 96.213 changing the CAIR designated representative.
 - (ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO₂ Trading Program.

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- (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.
 - (2) The CAIR designated representative of a CAIR SO₂ source and each CAIR SO₂ unit at the source shall submit the reports required under the CAIR SO₂ Trading Program, including those under subpart HHH of this part.
- (f) Liability.
- (1) Each CAIR SO₂ source and each CAIR SO₂ unit shall meet the requirements of the CAIR SO₂ Trading Program.
 - (2) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ source or the CAIR designated representative of a CAIR SO₂ source shall also apply to the owners and operators of such source and of the CAIR SO₂ units at the source.
 - (3) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ unit or the CAIR designated representative of a CAIR SO₂ unit shall also apply to the owners and operators of such unit.
- (g) Effect on other authorities. No provision of the CAIR SO₂ Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO₂ source or CAIR SO₂ unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ 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 CAIR SO₂ 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 CAIR SO₂ Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.208 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO₂ Trading Program are set forth in part 78 of this chapter.

Subpart BBB – CAIR designated representative for CAIR SO₂ sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under § 96.211, each CAIR SO₂ source, including all CAIR SO₂ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR SO₂ unit at the source.

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- (b) The CAIR designated representative of the CAIR SO₂ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO₂ units at the source and shall act in accordance with the certification statement in § 96.213(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, the CAIR 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 CAIR SO₂ source represented and each CAIR SO₂ unit at the source in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.
- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO₂ Allowance Tracking System account will be established for a CAIR SO₂ unit at a source, until the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR SO₂ units at the source.
- (e)
 - (1) Each submission under the CAIR SO₂ Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO₂ source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR 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 CAIR SO₂ source or a CAIR SO₂ unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.211 Alternate CAIR designated representative.

- (a) A certificate of representation under § 96.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.
- (c) Except in this section and §§ 96.202, 96.210(a) and (d), 96.212, 96.213, 96.251, and 96.282, whenever the term "CAIR designated representative" is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

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§ 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.
- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.
- (c) Changes in owners and operators.
 - (1) In the event a new owner or operator of a CAIR SO₂ source or a CAIR SO₂ unit is not included in the list of owners and operators in the certificate of representation under § 96.213, 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 CAIR designated representative and any alternate CAIR 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 CAIR SO₂ source or a CAIR SO₂ unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.213 amending the list of owners and operators to include the change.

§ 96.213 Certificate of representation.

- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
 - (1) Identification of the CAIR SO₂ source, and each CAIR SO₂ 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 CAIR designated representative and any alternate CAIR designated representative.
 - (3) A list of the owners and operators of the CAIR SO₂ source and of each CAIR SO₂ unit at the source.
 - (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative--

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- (i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO₂ unit at the source."
 - (ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ Trading Program on behalf of the owners and operators of the source and of each CAIR SO₂ 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 CAIR SO₂ 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 CAIR SO₂ unit, or where a customer purchases power from a CAIR SO₂ 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 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO₂ unit at the source; and CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ 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 CAIR SO₂ allowances by contract, CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in accordance with the contract."
- (5) The signature of the CAIR designated representative and any alternate CAIR 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.

§ 96.214 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under § 96.213 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 § 96.213 is received by the Administrator.
- (b) Except as provided in § 96.212(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 CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO₂ 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 CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO₂ allowance transfers.

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Subpart CCC – Permits

§ 96.220 General CAIR SO₂ Trading Program permit requirements.

- (a) For each CAIR SO₂ source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart III of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR SO₂ source and the CAIR SO₂ units at the source covered by the CAIR permit, all applicable CAIR SO₂ Trading Program, CAIR NO_x Annual Trading Program, and CAIR NO_x Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR SO₂ source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.222 for the source covering each CAIR SO₂ 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 CAIR SO₂ unit commences operation.
- (b) Duty to Reapply. For a CAIR SO₂ source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 for the source covering each CAIR SO₂ unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO₂ source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR SO₂ source;
- (b) Identification of each CAIR SO₂ unit at the CAIR SO₂ source; and
- (c) The standard requirements under § 96.206.

§ 96.223 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.222.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from the compliance account of the CAIR SO₂ source covered by the permit.

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- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO₂ source's title V operating permit or other federally enforceable permit as applicable.

§ 96.224 CAIR permit revisions.

Except as provided in § 96.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDD – [Reserved]

Subpart EEE – [Reserved]

Subpart FFF – CAIR SO₂ Allowance Tracking System

§ 96.250 [Reserved]

§ 96.251 Establishment of accounts.

- (a) Compliance accounts. Except as provided in § 96.284(e), upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR SO₂ 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 CAIR SO₂ allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR 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 CAIR authorized account representative and any alternate CAIR 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 CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO₂ allowances held in the general account;

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- (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ 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 CAIR authorized account representative and any alternate CAIR 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 CAIR 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 CAIR authorized account representative and any alternate CAIR 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 CAIR SO₂ allowances held in the general account in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.
 - (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
 - (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO₂ allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative:

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"I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO₂ allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

- (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.
- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
- (i) The CAIR 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 CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.
 - (ii) The alternate CAIR 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 CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.
 - (iii) (A) In the event a new person having an ownership interest with respect to CAIR SO₂ 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 CAIR authorized account representative and any alternate CAIR 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 CAIR SO₂ allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR 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 CAIR SO₂ allowances in the general account to include the change.

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(4) Objections concerning CAIR authorized account representative.

- (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO₂ Trading Program.
 - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO₂ 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.

§ 96.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO₂ 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 CAIR SO₂ allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.253 Recordation of CAIR SO₂ allowances.

- (a)
 - (1) After a compliance account is established under § 96.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
 - (2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO₂ allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
- (b)
 - (1) After a general account is established under § 96.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is

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established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

- (2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the general account any CAIR SO₂ allowance allocated for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.
- (c) Serial numbers for allocated CAIR SO₂ allowances. When recording the allocation of CAIR SO₂ allowances issued by a permitting authority under § 96.288, the Administrator will assign each such CAIR SO₂ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO₂ allowance is allocated.

§ 96.254 Compliance with CAIR SO₂ emissions limitation.

- (a) Allowance transfer deadline. The CAIR SO₂ allowances are available to be deducted for compliance with a source's CAIR SO₂ emissions limitation for a control period in a given calendar year only if the CAIR SO₂ 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 CAIR SO₂ allowance transfer correctly submitted for recordation under § 96.260 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 or for deduction under part 77 of this chapter.
- (b) Deductions for compliance. Following the recordation, in accordance with § 96.261, of CAIR SO₂ 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 CAIR SO₂ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period as follows:
 - (1) For a CAIR SO₂ source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:
 - (i) Deduct the amount of CAIR SO₂ allowances, available under paragraph (a) of under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.
 - (ii) Deduct the amount of CAIR SO₂ allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 96.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.
 - (iii) Treating the CAIR SO₂ allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting

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authority under § 96.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

- (A) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or
 - (B) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.
- (2) For a CAIR SO₂ source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:
 - (i) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or
 - (ii) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.
- (c)
 - (1) Identification of CAIR SO₂ allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO₂ 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 CAIR SO₂ source and the appropriate serial numbers.
 - (2) First-in, first-out. The Administrator will deduct CAIR SO₂ 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 CAIR SO₂ 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 CAIR SO₂ allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;
 - (ii) Any CAIR SO₂ allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

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- (iii) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;
 - (iv) Any CAIR SO₂ allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;
 - (v) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and
 - (vi) Any CAIR SO₂ allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, 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 CAIR SO₂ source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO₂ allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 96.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section, 3 times the number of tons 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 CAIR SO₂ source or the CAIR SO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, 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 CAIR SO₂ Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.255 Banking.

- (a) CAIR SO₂ 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 CAIR SO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under § 96.254, § 96.256, or subpart GGG of this part.

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§ 96.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.257 Closing of general accounts.

- (a) The CAIR 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 § 96.260 for any CAIR SO₂ allowances in the account to one or more other CAIR SO₂ Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO₂ allowances, the Administrator may notify the CAIR 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 CAIR SO₂ allowances into the account under § 96.260 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG – CAIR SO₂ Allowance Transfers

§ 96.260 Submission of CAIR SO₂ allowance transfers.

- (a) A CAIR authorized account representative seeking recordation of a CAIR SO₂ allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO₂ allowance transfer shall include the following elements, in a format specified by the Administrator:
 - (1) The account numbers of both the transferor and transferee accounts;
 - (2) The serial number of each CAIR SO₂ allowance that is in the transferor account and is to be transferred; and
 - (3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.
- (b)
 - (1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.
 - (2) The statement under paragraph (b)(1) of this section shall include the following: “By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR

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authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator.”

§ 96.261 EPA recordation.

- (a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO₂ allowances allocated to a CAIR SO₂ unit or as provided in paragraph (b) of this section) of receiving a CAIR SO₂ allowance transfer, the Administrator will record a CAIR SO₂ allowance transfer by moving each CAIR SO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under § 96.260; and
 - (2) The transferor account includes each CAIR SO₂ allowance identified by serial number in the transfer.
- (b) A CAIR SO₂ allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO₂ allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period immediately before such allowance transfer deadline.
- (c) Where a CAIR SO₂ allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR SO₂ allowance transfer under § 96.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR SO₂ allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:
 - (1) A decision not to record the transfer, and
 - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CAIR SO₂ allowance transfer for recordation following notification of non-recordation.

Subpart HHH – Monitoring and Reporting

§ 96.270 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO₂ unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.202 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”)

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in part 75 of this chapter shall be deemed to refer to the terms “CAIR SO₂ unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 96.202. The owner or operator of a unit that is not a CAIR SO₂ unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO₂ unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR SO₂ unit shall:
 - (1) Install all monitoring systems required under this subpart for monitoring SO₂ mass emissions and individual unit heat input (including all systems required to monitor SO₂ concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);
 - (2) Successfully complete all certification tests required under § 96.271 and meet all other requirements of this subpart and 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 CAIR SO₂ unit that commences commercial operation before July 1, 2008, by January 1, 2009.
 - (2) For the owner or operator of a CAIR SO₂ unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:
 - (i) January 1, 2009; or
 - (ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.
 - (3) For the owner or operator of a CAIR SO₂ unit for which construction of a new stack or flue or installation of add-on SO₂ emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) 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 or add-on SO₂ emissions controls.
 - (4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 96.284(b).
 - (5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner or operator of a CAIR SO₂ opt-in unit under subpart III of this part, by the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program as provided in § 96.284(g).
- (c) Reporting data.

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- (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR SO₂ 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 SO₂ concentration, SO₂ emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO₂ mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.
- (2) The owner or operator of a CAIR SO₂ 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 or appendix D to 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 CAIR SO₂ unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.275.
- (2) No owner or operator of a CAIR SO₂ unit shall operate the unit so as to discharge, or allow to be discharged, SO₂ emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (3) No owner or operator of a CAIR SO₂ unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO₂ mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (4) No owner or operator of a CAIR SO₂ 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 § 96.205 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - (iii) The CAIR 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 § 96.271(d)(3)(i).

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§ 96.271 Initial certification and recertification procedures.

- (a) The owner or operator of a CAIR SO₂ unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.270(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 and appendix D 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 § 96.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) If the Administrator has previously approved a petition under § 75.16(b)(2)(ii) of this chapter for apportioning the SO₂ mass emissions measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.11 or § 75.16 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.275(a) to determine whether the approval applies under the CAIR SO₂ Trading Program.
- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO₂ unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 96.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 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 (e) or (f) of this section respectively.
 - (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.270(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 § 96.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.
 - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO₂ 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 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

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monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 96.270(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

- (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.270(a)(1). For recertifications, replace the words “certification” and “initial certification” with the word “recertification”, replace the word “certified” with the word “recertified,” and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
- (i) Notification of certification. The CAIR 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 § 96.273.
- (ii) Certification application. The CAIR 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 CAIR SO₂ 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 (d)(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 (d)(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 CAIR SO₂ Trading Program.
- (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
- (B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority

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may issue a notice of disapproval under paragraph (d)(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 (d)(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 (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.
- (D) Audit decertification. The permitting authority or, for a CAIR SO₂ opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.272(b).
- (v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(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), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:
 - (1) For a disapproved SO₂ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO₂ and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.
 - (3) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

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- (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 or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.
- (f) Certification/recertification procedures for alternative monitoring systems. The CAIR 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.

§ 96.272 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 or appendix D to 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 § 96.271 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 or, for a CAIR SO₂ opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator 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 or the Administrator 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 § 96.271 for each disapproved monitoring system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR SO₂ unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.274 Recordkeeping and reporting.

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- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 96.210(e)(1).
- (b) Monitoring Plans. The owner or operator of a CAIR SO₂ unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 96.283 and 96.284(a).
- (c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.271, including the information required under § 75.63 of this chapter.
- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:
 - (1) The CAIR designated representative shall report the SO₂ mass emissions data and heat input data for the CAIR SO₂ 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 § 96.270(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 CAIR 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 § 75.64 of this chapter.
 - (3) For CAIR SO₂ units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program or CAIR NO_x Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO₂ mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR 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 subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and
 - (2) For a unit with add-on SO₂ emission controls and for all hours where SO₂ data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO₂ emissions.

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§ 96.275 Petitions.

- (a) The CAIR designated representative of a CAIR SO₂ unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.
- (b) The CAIR designated representative of a CAIR SO₂ unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.276 Additional requirements to provide heat input data.

The owner or operator of a CAIR SO₂ unit that monitors and reports SO₂ mass emissions using a SO₂ concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart III - CAIR SO₂ Opt-in Units

§ 96.280 Applicability.

A CAIR SO₂ opt-in unit must be a unit that:

- (a) Is located in the State;
- (b) Is not a CAIR SO₂ unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;
- (c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHH of this part.

§ 96.281 General.

- (a) Except as otherwise provided in §§ 96.201 through 96.204, §§ 96.206 through 96.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO₂ opt-in unit shall be treated as a CAIR SO₂ unit for purposes of applying such sections and subparts of this part.
- (b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO₂ unit before issuance of a CAIR opt-in permit for such unit.

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§ 96.282 CAIR designated representative.

Any CAIR SO₂ opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR SO₂ units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO₂ units.

§ 96.283 Applying for CAIR opt-in permit.

(a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR SO₂ opt-in unit in § 96.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.286(f) and (g), and, in order to apply, must submit the following:

- (1) A complete CAIR permit application under § 96.222;
- (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR SO₂ unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;
 - (ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
 - (iii) Is not and, so long as the unit is a CAIR SO₂ opt-in unit, will not become, an opt-in source under part 74 of this chapter;
 - (iv) Vents all of its emissions to a stack; and
 - (v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.222;
- (3) A monitoring plan in accordance with subpart HHH of this part;
- (4) A complete certificate of representation under § 96.213 consistent with § 96.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and
- (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO₂ allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g)).

(b) Duty to reapply.

- (1) The CAIR designated representative of a CAIR SO₂ opt-in unit shall submit a complete CAIR permit application under § 96.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
- (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR SO₂ Trading Program in accordance with § 96.286 or the unit

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becomes a CAIR SO₂ unit under § 96.204, the CAIR SO₂ opt-in unit shall remain subject to the requirements for a CAIR SO₂ opt-in unit, even if the CAIR designated representative for the CAIR SO₂ opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.283 is submitted in accordance with the following:

- (a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO₂ emissions rate and heat input of the unit are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.
- (b) Monitoring and reporting.
 - (1)
 - (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO₂ emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 96.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO₂ Trading Program in accordance with § 96.286.
 - (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO₂ Trading Program under § 96.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.
 - (2) To the extent the SO₂ emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO₂ Trading Program under § 96.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.
- (c) Baseline heat input. The unit's baseline heat rate shall equal:
 - (1) If the unit's SO₂ emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
 - (2) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the

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average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

- (d) Baseline SO₂ emission rate. The unit's baseline SO₂ emission rate shall equal:
- (1) If the unit's SO₂ emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO₂ emissions rate (in lb/mmBtu) for the control period;
 - (2) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or
 - (3) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO₂ emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline SO₂ emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO₂ opt-in unit in § 96.280 and meets the elements certified in § 96.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO₂ opt-in unit unless the source already has a compliance account.
- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO₂ opt-in unit in § 96.280 or meets the elements certified in § 96.283(a)(2), the permitting authority will issue a denial of a CAIR SO₂ opt-in permit for the unit.
- (g) Date of entry into CAIR SO₂ Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO₂ opt-in unit, and a CAIR SO₂ unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR SO₂ opt-in unit.
- (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO₂ opt-in unit of CAIR SO₂ allowances under § 96.288(c) and such unit is repowered after its date of entry into the CAIR SO₂ Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO₂ opt-in unit replacing the original CAIR SO₂ opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation,

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baseline heat input, and baseline SO₂ emission rate as the original CAIR SO₂ opt-in unit, and the original CAIR SO₂ opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR SO₂ unit.

§ 96.285 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:
 - (1) All elements required for a complete CAIR permit application under § 96.222;
 - (2) The certification in § 96.283(a)(2);
 - (3) The unit's baseline heat input under § 96.284(c);
 - (4) The unit's baseline SO₂ emission rate under § 96.284(d);
 - (5) A statement whether the unit is to be allocated CAIR SO₂ allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g));
 - (6) A statement that the unit may withdraw from the CAIR SO₂ Trading Program only in accordance with § 96.286; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.287.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part or this subpart, every allocation, transfer, or deduction of CAIR SO₂ allowances to or from the compliance account of the source that includes a CAIR SO₂ opt-in unit covered by the CAIR opt-in permit.
- (c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.286 Withdrawal from CAIR SO₂ Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO₂ opt-in unit may withdraw from the CAIR SO₂ Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit in accordance with paragraph (d) of this section.

- (a) Requesting withdrawal. In order to withdraw a CAIR opt-in unit from the CAIR SO₂ Trading Program, the CAIR designated representative of the CAIR SO₂ opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO₂ Trading Program under § 96.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR SO₂ opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO₂ Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

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- (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO₂ opt-in unit must meet the requirement to hold CAIR SO₂ allowances under § 96.206(c) and cannot have any excess emissions.
 - (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO₂ opt-in unit CAIR SO₂ allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO₂ units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO₂ opt-in unit may submit a CAIR SO₂ allowance transfer for any remaining CAIR SO₂ allowances to another CAIR SO₂ Allowance Tracking System in accordance with subpart GGG of this part.
- (c) Notification.
- (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO₂ allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit that the CAIR SO₂ opt-in unit's request to withdraw is denied. Such CAIR SO₂ opt-in unit shall continue to be a CAIR SO₂ opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO₂ opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO₂ opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO₂ Trading Program concerning any control periods for which the unit is a CAIR SO₂ opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR SO₂ opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR SO₂ Trading Program. Once a CAIR SO₂ opt-in unit withdraws from the CAIR SO₂ Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.283 for such CAIR SO₂ opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.284.
- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO₂ opt-in unit shall not be eligible to withdraw from the CAIR SO₂ Trading Program if the CAIR designated representative of the CAIR SO₂ opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO₂ opt-in unit of CAIR SO₂ allowances under § 96.288(c).

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- (a) Notification. If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO₂ opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204, the permitting authority will revise the CAIR SO₂ opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.223 as of the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204.
 - (2)
 - (i) The Administrator will deduct from the compliance account of the source that includes a CAIR SO₂ opt-in unit that becomes a CAIR SO₂ unit under § 96.204, CAIR SO₂ allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) Any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 96.288 for any control period after the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204; and
 - (B) If the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204 is not December 31, the CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 96.288 for the control period that includes the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 96.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.
 - (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO₂ unit that becomes a CAIR SO₂ unit under § 96.204 contains the CAIR SO₂ allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

§ 96.288 SO₂ allowance allocations to CAIR SO₂ opt-in units.

- (a) Timing requirements.
 - (1) When the CAIR opt-in permit is issued under § 96.284(e), the permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g), in accordance with paragraph (b) or (c) of this section.
 - (2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO₂ opt-in unit, in accordance with paragraph (b) or (c) of this section.
- (b) Calculation of allocation. For each control period for which a CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances, the permitting authority will allocate in accordance with the following procedures:

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- (1) The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:
 - (i) The CAIR SO₂ opt-in unit's baseline heat input determined under § 96.284(c); or
 - (ii) The CAIR SO₂ opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g).
 - (2) The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:
 - (i) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 96.284(d) and multiplied by 70 percent; or
 - (ii) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated.
 - (3) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO₂ emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.
- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO₂ opt-in unit of CAIR SO₂ allowances under this paragraph (subject to the conditions in §§ 96.284(h) and 96.286(g)), the permitting authority will allocate to the CAIR SO₂ opt-in unit as follows:
- (1) For each control period in 2010 through 2014 for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR SO₂ allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:
 - (A) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 96.284(d); or
 - (B) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g).
 - (iii) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO₂ emission rate under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.
 - (2) For each control period in 2015 and thereafter for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances,

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- (i) The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The SO₂ emission rate (in lb/mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:
 - (A) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 96.284(d) multiplied by 10 percent; or
 - (B) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated.
 - (iii) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO₂ emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.
- (d) Recordation.
- (1) The Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the permitting authority to the CAIR SO₂ opt-in unit under paragraph (a)(1) of this section.
 - (2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR SO₂ Trading Program under § 96.284(g), and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the permitting authority to the CAIR SO₂ opt-in unit under paragraph (a)(2) of this section.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2005. (09-44)

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 an amendment to the Tennessee Air Pollution Control Regulations, and Title V Program pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing 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 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 18th day of November, 2005. 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 Friday, November 18, 2005, at the office of the 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 November 18, 2005 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. 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 Mr. Ron Culberson at (615) 532-0554. 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 Mr. Malcolm Butler, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0600.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-3-26 ADMINISTRATIVE FEES SCHEDULE

AMENDMENT

Subparagraph (d) of paragraph (9) of rule 1200-3-26-.02 Construction And Annual Emission Fees is amended by striking the two citations to the period "July 1, 2004, through June 30, 2005," and inserting in their places "July 1, 2005, through June 30, 2006;" striking the value "\$3,500" in the third sentence and inserting in its place the value "\$4,500" and in the third sentence striking the two citations to the period "July 1, 2004, through June 30, 2005," and inserting in their places "July 1, 2005, through June 30, 2006;" so that, as amended, the subparagraph shall read:

- (d) The rate at which major source actual-based annual emission fees are assessed shall be \$34.00 per ton for the annual accounting period July 1, 2005, through June 30, 2006. The rate at which major source allowable-based annual emission fees are assessed shall be \$23.50 per ton for the annual accounting period July 1, 2005, through June 30, 2006. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each

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major source is to pay shall not be less than \$4,500 for the annual accounting period July 1, 2005, through June 30, 2006. An annual revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board.

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 30th day of September, 2005. (09-46)

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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 an amendment 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 this hearing 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 Multi-Media Room, Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243 at 9:30 a.m. on the 18th day of November, 2005.

Written comments will be included in the hearing records if received by the close of business on November 17, 2005, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on November 17, 2005.

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 November 17, 2005, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. 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.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-3-27 NITROGEN OXIDES

NEW RULE

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1200-3-27-.10 CAIR NO_x Annual Trading Program

1200-3-27-.10 CAIR NO_x ANNUAL TRADING PROGRAM

(1) The provisions of 40 CFR Part 96 concerning the CAIR NO_x Annual Trading Program are hereby adopted by reference with the following revisions:

(a) The provisions of Sec. 96.143 as adopted for Tennessee are revised to read as follows:

§ 96.143 Compliance supplement pool.

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1. In addition to the CAIR NO_x allowances allocated under 40 CFR Sec. 96.142, the permitting authority may allocate up to 8,944 tons of CAIR NO_x allowances for the control period in 2009.
2. For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under part 1. of this subparagraph for such early reduction credits, in accordance with the following:
 - (i) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 40 CFR 96 subpart HH in each control period for which early reduction credit is requested.
 - (ii) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with 40 CFR 96 subpart HH. NO_x emission reductions shall be calculated as follows:
 - (I) The unit's heat input in mmBtu for the control period shall be multiplied by the difference between the most stringent federally enforceable requirement and the unit's actual NO_x emission rate for such control period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton; or,
 - (II) For units with post combustion NO_x controls (selective catalytic reduction, selective noncatalytic reduction, or other post-combustion NO_x control as approved by the Technical Secretary), NO_x emission reductions shall be calculated by multiplying the unit's heat input during any period in which the control equipment is operated, excluding any period regulated by rule 1200-3-27-.06 (NO_x Budget Trading Program for State Implementation Plans), by the difference between the most stringent federally enforceable requirement and the unit's actual NO_x emission rate for such operating period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton.
3. For any CAIR NO_x unit in the State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under part 1. of this subparagraph, in accordance with the following:
 - (i) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.
 - (ii) In the request under subpart (i) of this part, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR

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NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

- (I) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or
 - (II) Obtain under parts 2. and 4. of this subparagraph, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.
4. The permitting authority will review each request under parts 2. or 3. of this subparagraph submitted by July 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:
- (i) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of parts 2. or 3. of this subparagraph.
 - (ii) If the State's compliance supplement pool under part 1. of this subparagraph has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under subpart (i) of this part), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under subpart (i) of this part).

(2) PART 96--CAIR NO_x Annual Trading Program

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Subpart AA – CAIR NO_x Annual Trading Program General Provisions

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§ 96.101 Purpose.

This subpart and subparts BB through II establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_x Annual Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BB through II as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Annual Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.102 Definitions.

The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x allowances issued under subpart EE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit or a new unit set-aside and, with regard to CAIR NO_x allowances issued under § 96.188, the determination by the permitting authority of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit.

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 CAIR NO_x allowance transfer must be submitted for recordation in a CAIR NO_x source's compliance account in order to be used to meet the source's CAIR NO_x emissions limitation for such control period in accordance with § 96.154.

Alternate CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x 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 subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR

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NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

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 authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB and II of this part, to transfer and otherwise dispose of CAIR NO_x allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x 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 subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_x allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EE of this part or § 96.188 to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) of this chapter shall not be a CAIR NO_x allowance.

CAIR NO_x allowance deduction or deduct CAIR NO_x allowances means the permanent withdrawal of CAIR NO_x allowances by the Administrator from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x units at a CAIR NO_x source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x allowances under the CAIR NO_x Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

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CAIR NO_x Allowance Tracking System account means an account in the CAIR NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x allowances.

CAIR NO_x allowances held or hold CAIR NO_x allowances means the CAIR NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_x Allowance Tracking System account.

CAIR NO_x 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 this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x emissions limitation means, for a CAIR NO_x source, the tonnage equivalent of the CAIR NO_x allowances available for deduction for the source under § 96.154(a) and (b) for a control period.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

CAIR NO_x 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 this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under § 96.104 and, except for purposes of § 96.105 and subpart EE of this part, a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_x Annual Trading Program requirements applicable to a CAIR NO_x source, to each CAIR NO_x unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ source means a source that includes one or more CAIR SO₂ units.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO₂ unit means a unit that is subject to the CAIR SO₂ Trading Program under § 96.204 and a CAIR SO₂ opt-in unit under subpart III of this part.

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.

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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:

- (1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or
- (2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-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 § 96.105.
 - (i) For a unit that is a CAIR NO_x unit under § 96.104 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.

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- (ii) For a unit that is a CAIR NO_x unit under § 96.104 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), (2), or (3) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_x unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x unit under § 96.104.
 - (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),(2), or (3) of this definition as appropriate.
- (3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_x emissions rate and the heat input of the unit under § 96.184(b)(1)(i).
 - (i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.
- (4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

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 § 96.105.
 - (i) For a unit that is a CAIR NO_x unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical

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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 CAIR NO_x unit under § 96.104 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), (2), or (3) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_x unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x unit under § 96.104.
 - (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),(2), or (3) of this definition as appropriate.
- (3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_x emissions rate and the heat input of the unit under § 96.184(b)(1)(i).
 - (i) For a unit with a date for commencement of operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Allowance Tracking System account, established by the Administrator for a CAIR NO_x source under subpart FF or II of this part, in which any CAIR NO_x allowance allocations for the CAIR NO_x units at the source are initially recorded and in which are held any CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitation in accordance with § 96.154.

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Continuous emission monitoring system or CEMS means the equipment required under subpart HH of this part 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 nitrogen oxides 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 continuous emission monitoring systems required under subpart HH of this part:

- (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 standard cubic feet per hour (scfh);
- (2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);
- (3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);
- (4) 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 H₂O;
- (5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
- (6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

Control period means the period beginning January 1 of a calendar year, except as provided in § 96.106(c)(2), 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 CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x units at a CAIR NO_x source during a control period that exceeds the CAIR NO_x emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

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General account means a CAIR NO_x Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HH of this part 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.

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.

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 subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, 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

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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.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_x unit or a CAIR NO_x source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

- (1) With regard to a CAIR NO_x source or a CAIR NO_x unit at a source, respectively:
 - (i) Any holder of any portion of the legal or equitable title in a CAIR NO_x unit at the source or the CAIR NO_x unit;
 - (ii) Any holder of a leasehold interest in a CAIR NO_x unit at the source or the CAIR NO_x unit; or
 - (iii) Any purchaser of power from a CAIR NO_x unit at the source or the CAIR NO_x 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 CAIR NO_x unit; or
- (2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x 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 CAIR NO_x Annual Trading Program in accordance with subpart CC of this part 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 CAIR NO_x allowances, the movement of CAIR NO_x allowances by the Administrator into or between CAIR NO_x Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

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Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR NO_x allowance, the unique identification number assigned to each CAIR NO_x 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 Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

State means one of the States or the District of Columbia that adopts the CAIR NO_x Annual Trading Program pursuant to § 51.123(o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

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Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x emissions limitation, total tons of nitrogen oxides 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 subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

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, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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 heating 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.

§ 96.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.

CO₂-carbon dioxide.

NO_x-nitrogen oxides.

hr-hour.

kW-kilowatt electrical.

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kWh-kilowatt hour.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
O₂-oxygen.
ppm-parts per million.
lb-pound.
scfh-standard cubic feet per hour.
SO₂-sulfur dioxide.
H₂O-water.
yr-year.

§ 96.104 Applicability.

The following units in a State shall be CAIR NO_x units, and any source that includes one or more such units shall be a CAIR NO_x source, subject to the requirements of this subpart and subparts BB through HH of this part:

- (a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine 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) For 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.

§ 96.105 Retired unit exemption.

- (a)
 - (1) Any CAIR NO_x unit that is permanently retired and is not a CAIR NO_x opt-in unit under subpart II of this part shall be exempt from the CAIR NO_x Annual Trading Program, except for the provisions of this section, § 96.102, § 96.103, § 96.104, § 96.106(c)(4) through (8), § 96.107, and subparts BB and EE through GG of this part.
 - (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR 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 subpart CC of this part 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.

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- (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
- (2) The permitting authority will allocate CAIR NO_x allowances under subpart EE of this part 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 CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Annual 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 CAIR designated representative of the source submits a complete CAIR permit application under § 96.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 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 CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, 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.

§ 96.106 Standard requirements.

(a) Permit Requirements.

- (1) The CAIR designated representative of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall:
 - (i) Submit to the permitting authority a complete CAIR permit application under § 96.122 in accordance with the deadlines specified in § 96.121; 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 CAIR permit application and issue or deny a CAIR permit.
 - (2) The owners and operators of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.
 - (3) Except as provided in subpart II of this part, the owners and operators of a CAIR NO_x source that is not otherwise required to have a title V operating permit and each CAIR NO_x unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_x source and such CAIR NO_x unit.
- (b) Monitoring, reporting, and recordkeeping requirements.
- (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x source and each CAIR NO_x unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.
 - (2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_x source with the CAIR NO_x emissions limitation under paragraph (c) of this section.
- (c) Nitrogen oxides emission requirements.
- (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x source and each CAIR NO_x unit at the source shall hold, in the source's compliance account, CAIR NO_x allowances available for compliance deductions for the control period under § 96.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x units at the source, as determined in accordance with subpart HH of this part.
 - (2) A CAIR NO_x unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.170(b)(1),(2), or (5) and for each control period thereafter.
 - (3) A CAIR NO_x 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 CAIR NO_x allowance was allocated.
 - (4) CAIR NO_x allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Allowance Tracking System accounts in accordance with subpart EE of this part.
 - (5) A CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Annual Trading Program. No provision of the CAIR NO_x Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.105 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 CAIR NO_x allowance does not constitute a property right.

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- (7) Upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR NO_x unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_x unit.
- (d) Excess emissions requirements. If a CAIR NO_x source emits nitrogen oxides during any control period in excess of the CAIR NO_x emissions limitation, then:
 - (1) The owners and operators of the source and each CAIR NO_x unit at the source shall surrender the CAIR NO_x allowances required for deduction under § 96.154(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
 - (2) Each ton 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.
- (e) Recordkeeping and reporting requirements.
 - (1) Unless otherwise provided, the owners and operators of the CAIR NO_x source and each CAIR NO_x 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 § 96.113 for the CAIR designated representative for the source and each CAIR NO_x 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 § 96.113 changing the CAIR designated representative.
 - (ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual Trading Program.
 - (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Annual Trading Program.
 - (2) The CAIR designated representative of a CAIR NO_x source and each CAIR NO_x unit at the source shall submit the reports required under the CAIR NO_x Annual Trading Program, including those under subpart HH of this part.
- (f) Liability.
 - (1) Each CAIR NO_x source and each CAIR NO_x unit shall meet the requirements of the CAIR NO_x Annual Trading Program.

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- (2) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x source or the CAIR designated representative of a CAIR NO_x source shall also apply to the owners and operators of such source and of the CAIR NO_x units at the source.
- (3) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x unit or the CAIR designated representative of a CAIR NO_x unit shall also apply to the owners and operators of such unit.
- (g) Effect on other authorities. No provision of the CAIR NO_x Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x source or CAIR NO_x unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.107 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual 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 CAIR NO_x Annual 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 CAIR NO_x Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.108 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB – CAIR designated representative for CAIR NO_x sources

§ 96.110 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under § 96.111, each CAIR NO_x source, including all CAIR NO_x units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Annual Trading Program concerning the source or any CAIR NO_x unit at the source.
- (b) The CAIR designated representative of the CAIR NO_x source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x units at the source and shall act in accordance with the certification statement in § 96.113(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, the CAIR 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 CAIR NO_x source represented and each CAIR NO_x unit at the source in all matters pertaining to the CAIR NO_x Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by

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any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Allowance Tracking System account will be established for a CAIR NO_x unit at a source, until the Administrator has received a complete certificate of representation under § 96.113 for a CAIR designated representative of the source and the CAIR NO_x units at the source.
- (e)
 - (1) Each submission under the CAIR NO_x Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR 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 CAIR NO_x source or a CAIR NO_x unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.111 Alternate CAIR designated representative.

- (a) A certificate of representation under § 96.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.
- (c) Except in this section and §§ 96.102, 96.110(a) and (d), 96.112, 96.113, 96.151 and 96.182, whenever the term "CAIR designated representative" is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be

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binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.

- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.
- (c) Changes in owners and operators.
 - (1) In the event a new owner or operator of a CAIR NO_x source or a CAIR NO_x unit is not included in the list of owners and operators in the certificate of representation under § 96.113, 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 CAIR designated representative and any alternate CAIR 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 CAIR NO_x source or a CAIR NO_x unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.113 amending the list of owners and operators to include the change.

§ 96.113 Certificate of representation.

- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
 - (1) Identification of the CAIR NO_x source, and each CAIR NO_x 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 CAIR designated representative and any alternate CAIR designated representative.
 - (3) A list of the owners and operators of the CAIR NO_x source and of each CAIR NO_x unit at the source.
 - (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative--
 - (i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x unit at the source."
 - (ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading Program on behalf of the

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owners and operators of the source and of each CAIR NO_x 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 CAIR NO_x 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 CAIR NO_x unit, or where a customer purchases power from a CAIR NO_x 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 ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x unit at the source; and CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x 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 CAIR NO_x allowances by contract, CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in accordance with the contract.”

- (5) The signature of the CAIR designated representative and any alternate CAIR 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.

§ 96.114 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under § 96.113 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 § 96.113 is received by the Administrator.
- (b) Except as provided in § 96.112(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 CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Annual 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 CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.

Subpart CC – Permits

§ 96.120 General CAIR Annual Trading Program permit requirements.

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- (a) For each CAIR NO_x source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart II of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR NO_x source and the CAIR NO_x units at the source covered by the CAIR permit, all applicable CAIR NO_x Annual Trading Program, CAIR NO_x Ozone Season Trading Program, and CAIR SO₂ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.121 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR NO_x source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.122 for the source covering each CAIR NO_x unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x unit commences operation.
- (b) Duty to Reapply. For a CAIR NO_x source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 for the source covering each CAIR NO_x unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR NO_x source;
- (b) Identification of each CAIR NO_x unit at the CAIR NO_x source; and
- (c) The standard requirements under § 96.106.

§ 96.123 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.122.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from the compliance account of the CAIR NO_x source covered by the permit.
- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x source's title V operating permit or other federally enforceable permit as applicable.

§ 96.124 CAIR permit revisions.

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Except as provided in § 96.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD – [Reserved]

Subpart EE – CAIR NO_x Allowance Allocations

§ 96.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State Trading Budget for 2009-2014 (tons)	State Trading Budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966

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§ 96.141 Timing requirements for CAIR NO_x allowance allocations.

- (a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b)
 - (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.
 - (2) If the permitting authority fails to submit to the Administrator the CAIR NO_x allowance allocations in accordance with paragraph (b)(1), the Administrator will assume that the allocations of CAIR NO_x 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.
- (c)
 - (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(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 CAIR NO_x allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of CAIR NO_x 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_x unit that would otherwise be allocated CAIR NO_x allowances under § 96.142(a) and (b), as well as under § 96.142(a), (c), and (d), for the applicable control period will be assumed to be allocated no CAIR NO_x allowances under § 96.142(a), (c), and (d) for the applicable control period.

§ 96.142 CAIR NO_x allowance allocations.

- (a)
 - (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x allowance allocations under paragraph (b) of this section for each CAIR NO_x unit will be:
 - (i) For units commencing operation before January 1, 2001 the average of the 3 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 follows:
 - (A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - (B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - (C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

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- (ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.
- (2)
 - (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x 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.
 - (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, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, 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 3,414 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 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.140 (except as provided in paragraph (d) of this section).
 - (2) The permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.

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- (c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x allowances to CAIR NO_x units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:
- (1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.140.
 - (2) The CAIR designated representative of such a CAIR NO_x unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. The CAIR NO_x allowance allocation request must be submitted on or before July 1 of the first control period for which the CAIR NO_x allowances are requested and after the date on which the CAIR NO_x unit commences commercial operation.
 - (3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period.
 - (4) The permitting authority will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x 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 CAIR NO_x 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 CAIR NO_x 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 CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.
 - (iv) If the amount of CAIR NO_x 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 CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the

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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 CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.
- (d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.140, and rounded to the nearest whole allowance as appropriate.

§ 97.143 Compliance supplement pool.

- (a) In addition to the CAIR NO_x allowances allocated under § 96.142, the permitting authority may allocate for the control period in 2009 up to the following amount of CAIR NO_x allowances to CAIR NO_x units in the respective State:

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State	Compliance Supplement Pool
Alabama	10,166
District Of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898

- (b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:
- (1) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.
 - (2) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with subpart HH of this part.

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- (c) For any CAIR NO_x unit in the State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:
- (1) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.
 - (2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:
 - (i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or
 - (ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.
- (d) The permitting authority will review each request under paragraph (b) or (c) of this section submitted by July 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:
- (1) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.
 - (2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).
 - (3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

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“Unit's adjusted allocation” is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

- (4) By November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.
- (5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF – CAIR NO_x Allowance Tracking System

§ 96.150 [Reserved]

§ 96.151 Establishment of accounts.

- (a) Compliance accounts. Except as provided in § 96.184(e), upon receipt of a complete certificate of representation under § 96.113, the Administrator will establish a compliance account for the CAIR NO_x 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 CAIR NO_x allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR 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 CAIR authorized account representative and any alternate CAIR 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 CAIR authorized account representative and any alternate CAIR authorized account

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representative to represent their ownership interest with respect to the CAIR NO_x allowances held in the general account;

- (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual 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 CAIR authorized account representative and any alternate CAIR 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 CAIR 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 CAIR authorized account representative and any alternate CAIR 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 CAIR NO_x allowances held in the general account in all matters pertaining to the CAIR NO_x Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.
 - (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
 - (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest

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with respect to CAIR NO_x allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

- (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.
- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
 - (i) The CAIR 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 CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.
 - (ii) The alternate CAIR 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 CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.
 - (iii) (A) In the event a new person having an ownership interest with respect to CAIR NO_x 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 CAIR authorized account representative and any alternate CAIR 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 CAIR NO_x allowances in the general account, including

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the addition of persons, the CAIR authorized account representative or any alternate CAIR 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 CAIR NO_x allowances in the general account to include the change.

(4) Objections concerning CAIR authorized account representative.

- (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Annual Trading Program.
 - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x 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.

§ 96.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x 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 CAIR NO_x allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.153 Recordation of CAIR NO_x allowance allocations.

- (a) The Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at a source, as submitted by the permitting authority in accordance with § 96.141(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By December 1, 2009, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.141(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 CAIR NO_x source's compliance account under § 96.154, the Administrator will record in the

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CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(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, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.
- (e) Serial numbers for allocated CAIR NO_x allowances. When recording the allocation of CAIR NO_x allowances for a CAIR NO_x unit in a compliance account, the Administrator will assign each CAIR NO_x allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x allowance is allocated.

§ 96.154 Compliance with CAIR NO_x emissions limitation.

- (a) Allowance transfer deadline. The CAIR NO_x allowances are available to be deducted for compliance with a source's CAIR NO_x emissions limitation for a control period in a given calendar year only if the CAIR NO_x 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 CAIR NO_x allowance transfer correctly submitted for recordation under § 96.160 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 § 96.161, of CAIR NO_x 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 CAIR NO_x allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x emissions limitation for the control period, as follows:
 - (1) Until the amount of CAIR NO_x allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_x units at the source for the control period; or
 - (2) If there are insufficient CAIR NO_x allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x allowances available under paragraph (a) of this section remain in the compliance account.
- (c) (1) Identification of CAIR NO_x allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x 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

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the Administrator, the identification of the CAIR NO_x source and the appropriate serial numbers.

- (2) First-in, first-out. The Administrator will deduct CAIR NO_x 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 CAIR NO_x 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 CAIR NO_x allowances that were allocated to the units at the source, in the order of recordation; and then
 - (ii) Any CAIR NO_x allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GG of this part, 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 CAIR NO_x source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons 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 CAIR NO_x source or the CAIR NO_x units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, 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 CAIR NO_x Annual Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR NO_x allowances from or transfer CAIR NO_x allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.155 Banking.

- (a) CAIR NO_x 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 CAIR NO_x allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x allowance is deducted or transferred under § 96.154, § 96.156, or subpart GG of this part.

§ 96.156 Account error.

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The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.157 Closing of general accounts.

- (a) The CAIR 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 § 96.160 for any CAIR NO_x allowances in the account to one or more other CAIR NO_x Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x allowances, the Administrator may notify the CAIR 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 CAIR NO_x allowances into the account under § 96.160 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG – CAIR NO_x Allowance Transfers

§ 96.160 Submission of CAIR NO_x allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x 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 CAIR NO_x allowance that is in the transferor account and is to be transferred; and
- (c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.161 EPA recordation.

- (a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x allowance transfer, the Administrator will record a CAIR NO_x allowance transfer by moving each CAIR NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under § 96.160; and
 - (2) The transferor account includes each CAIR NO_x allowance identified by serial number in the transfer.
- (b) A CAIR NO_x allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.154 for the control period immediately before such allowance transfer deadline.

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- (c) Where a CAIR NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.162 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x allowance transfer under § 96.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x allowance transfer that fails to meet the requirements of § 96.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:
 - (1) A decision not to record the transfer, and
 - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CAIR NO_x allowance transfer for recordation following notification of non-recordation.

Subpart HH – Monitoring and Reporting

§ 96.170 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.102 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 “CAIR NO_x unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 96.102. The owner or operator of a unit that is not a CAIR NO_x unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x unit shall:
 - (1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);
 - (2) Successfully complete all certification tests required under § 96.171 and meet all other requirements of this subpart and 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.

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- (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 CAIR NO_x unit that commences commercial operation before July 1, 2007, by January 1, 2008.
 - (2) For the owner or operator of a CAIR NO_x unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:
 - (i) January 1, 2008; 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 CAIR NO_x unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1),(2), (4), or (5) 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 or add-on NO_x emissions controls.
 - (4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 96.184(b).
 - (5) Notwithstanding the dates in paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), for the owner or operator of a CAIR NO_x opt-in unit under subpart II of this part, by the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program as provided in § 96.184(g).
- (c) Reporting data.
- (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_x 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 NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.
 - (2) The owner or operator of a CAIR NO_x 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 or subpart H of, or appendix D or appendix E to, 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.

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(d) Prohibitions

- (1) No owner or operator of a CAIR NO_x unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.175.
- (2) No owner or operator of a CAIR NO_x unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (3) No owner or operator of a CAIR NO_x unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (4) No owner or operator of a CAIR NO_x unit shall retire or permanently discontinue use of the 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 § 96.105 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - (iii) The CAIR 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 § 96.171(d)(3)(i).

§ 96.171 Initial certification and recertification procedures.

- (a) The owner or operator of a CAIR NO_x unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.170(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, appendix D, and appendix E 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 § 96.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66

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of this chapter for an alternative to a requirement in § 75.12, § 75.17, or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) to determine whether the approval applies under the CAIR NO_x Annual Trading Program.

- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 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 (e) or (f) of this section respectively.
 - (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.170(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 § 96.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.
 - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x 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 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. Any fuel flowmeter system, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 96.170(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.
 - (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.170(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
 - (i) Notification of certification. The CAIR 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 § 96.173.
 - (ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A

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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 CAIR NO_x Annual 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 (d)(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 (d)(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 CAIR NO_x Annual Trading Program.
 - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
 - (B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR 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 (d)(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 (d)(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 (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

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- (D) Audit decertification. The permitting authority or, for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).
- (v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(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), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:
 - (1) For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ 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.
 - (4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(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 or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the

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applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

- (f) Certification/recertification procedures for alternative monitoring systems. The CAIR 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.

§ 96.172 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 or subpart H of, or appendix D or appendix E to, 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 § 96.171 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 or, for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator 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 or the Administrator 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 § 96.171 for each disapproved monitoring system.

§ 96.173 Notifications.

The CAIR designated representative for a CAIR NO_x unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.174 Recordkeeping and reporting.

- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 96.110(e)(1).
- (b) Monitoring Plans. The owner or operator of a CAIR NO_x unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, §§ 96.183 and 96.184(a).

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- (c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, including the information required under § 75.63 of this chapter.
- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:
 - (1) The CAIR designated representative shall report the NO_x mass emissions data and heat input data for the CAIR NO_x 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, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008; or
 - (ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008.
 - (2) The CAIR 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 § 75.73(f) of this chapter.
 - (3) For CAIR NO_x units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Ozone Season Trading Program or CAIR SO₂ 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 NO_x mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR 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 subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and
 - (2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions.

§ 96.175 Petitions.

- (a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

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- (b) (1) The CAIR designated representative of a CAIR NO_x unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.
- (2) The CAIR designated representative of a CAIR NO_x unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_x unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart II - CAIR NO_x Opt-in Units

§ 96.180 Applicability.

A CAIR NO_x opt-in unit must be a unit that:

- (a) Is located in the State;
- (b) Is not a CAIR NO_x unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 that is in effect;
- (c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 96.181 General.

- (a) Except as otherwise provided in §§ 96.101 through 96.104, §§ 96.106 through 96.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_x opt-in unit shall be treated as a CAIR NO_x unit for purposes of applying such sections and subparts of this part.
- (b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x unit before issuance of a CAIR opt-in permit for such unit.

§ 96.182 CAIR designated representative.

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Any CAIR NO_x opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x units.

§ 96.183 Applying for CAIR opt-in permit.

- (a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x opt-in unit in § 96.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.186(f) and (g), and, in order to apply, must submit the following:
 - (1) A complete CAIR permit application under § 96.122;
 - (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR NO_x unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 that is in effect;
 - (ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
 - (iii) Vents all of its emissions to a stack, and
 - (iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.122;
 - (3) A monitoring plan in accordance with subpart HH of this part;
 - (4) A complete certificate of representation under § 96.113 consistent with § 96.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and
 - (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x allowances under § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g)).
- (b) Duty to reapply.
 - (1) The CAIR designated representative of a CAIR NO_x opt-in unit shall submit a complete CAIR permit application under § 96.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
 - (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_x Annual Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_x unit under § 96.104, the CAIR NO_x opt-in unit shall remain subject to the requirements for a CAIR NO_x opt-in unit, even if the CAIR designated representative for the CAIR NO_x opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

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§ 96.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.183 is submitted in accordance with the following:

- (a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.
- (b) Monitoring and reporting.
 - (1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 96.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Annual Trading Program in accordance with § 96.186.
 - (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Annual Trading Program under § 96.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.
- (2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Annual Trading Program under § 96.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.
- (c) Baseline heat input. The unit's baseline heat rate shall equal:
 - (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.
- (d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:

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- (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or
 - (3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x opt-in unit in § 96.180 and meets the elements certified in § 96.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x opt-in unit unless the source already has a compliance account.
- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x opt-in unit in § 96.180 or meets the elements certified in § 96.183(a)(2), the permitting authority will issue a denial of a CAIR NO_x opt-in permit for the unit.
- (g) Date of entry into CAIR NO_x Annual Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x opt-in unit, and a CAIR NO_x unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR NO_x opt-in unit.
 - (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under § 96.188(c) and such unit is repowered after its date of entry into the CAIR NO_x Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x opt-in unit replacing the original CAIR NO_x opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x opt-in unit, and the original CAIR NO_x opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_x unit.

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§ 96.185 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:
 - (1) All elements required for a complete CAIR permit application under § 96.122;
 - (2) The certification in § 96.183(a)(2);
 - (3) The unit's baseline heat input under § 96.184(c);
 - (4) The unit's baseline NO_x emission rate under § 96.184(d);
 - (5) A statement whether the unit is to be allocated CAIR NO_x allowances under § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g));
 - (6) A statement that the unit may withdraw from the CAIR NO_x Annual Trading Program only in accordance with § 96.186; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.187.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart FF, GG, or II of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x allowances to or from the compliance account of the source that includes a CAIR NO_x opt-in unit covered by the CAIR opt-in permit.
- (c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.186 Withdrawal from CAIR NO_x Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x opt-in unit may withdraw from the CAIR NO_x Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit in accordance with paragraph (d) of this section.

- (a) Requesting withdrawal. In order to withdraw a CAIR opt-in unit from the CAIR NO_x Annual Trading Program, the CAIR designated representative of the CAIR NO_x opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_x Annual Trading Program under § 96.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR NO_x opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
 - (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x opt-in unit must meet the requirement to hold CAIR NO_x allowances under § 96.106(c) and cannot have any excess emissions.

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- (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x opt-in unit may submit a CAIR NO_x allowance transfer for any remaining CAIR NO_x allowances to another CAIR NO_x Allowance Tracking System in accordance with subpart GG of this part.
- (c) Notification.
 - (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit that the CAIR NO_x opt-in unit's request to withdraw is denied. Such CAIR NO_x opt-in unit shall continue to be a CAIR NO_x opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Annual Trading Program concerning any control periods for which the unit is a CAIR NO_x opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR NO_x Annual Trading Program. Once a CAIR NO_x opt-in unit withdraws from the CAIR NO_x Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.183 for such CAIR NO_x opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.184.
- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x opt-in unit shall not be eligible to withdraw from the CAIR NO_x Annual Trading Program if the CAIR designated representative of the CAIR NO_x opt-in unit requests, and the permitting authority issues a CAIR NO_x opt-in permit providing for, allocation to the CAIR NO_x opt-in unit of CAIR NO_x allowances under § 96.188(c).

§ 96.187 Change in regulatory status.

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- (a) Notification. If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, the permitting authority will revise the CAIR NO_x opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.123 as of the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104.
 - (2) (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit that becomes a CAIR NO_x unit under § 96.104, CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) Any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 96.188 for any control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104; and
 - (B) If the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 is not December 31, the CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 96.188 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.
 - (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x unit that becomes a CAIR NO_x unit under § 96.104 contains the CAIR NO_x allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.
- (3) (i) For every control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, the CAIR NO_x opt-in unit will be treated, solely for purposes of CAIR NO_x allowance allocations under § 96.142, as a unit that commences operation on the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 and will be allocated CAIR NO_x allowances under § 96.142.
- (ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 is not January 1, the following amount of CAIR NO_x allowances will be allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under § 96.142 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104:
 - (A) The amount of CAIR NO_x allowances otherwise allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under § 96.142 for the control period multiplied by;

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(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.188 NO_x allowance allocations to CAIR NO_x opt-in units.

(a) Timing requirements.

(1) When the CAIR opt-in permit is issued under § 96.184(e), the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) Calculation of allocation. For each control period for which a CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:

- (i) The CAIR NO_x opt-in unit's baseline heat input determined under § 96.184(c); or
- (ii) The CAIR NO_x opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g).

(2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:

- (i) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.184(d) and multiplied by 70 percent; or
- (ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

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- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under this paragraph (subject to the conditions in §§ 96.184(h) and 96.186(g)), the permitting authority will allocate to the CAIR NO_x opt-in unit as follows:
- (1) For each control period in 2009 through 2014 for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:
 - (A) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.184(d); or
 - (B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g).
 - (iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
 - (2) For each control period in 2015 and thereafter for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,
 - (i) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:
 - (A) 0.15 lb/mmBtu;
 - (B) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.184(d); or
 - (C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.
 - (iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (d) Recordation.

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- (1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(1) of this section.
- (2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(2) of this section.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of September, 2005. (09-33)

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 an amendment 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 this hearing 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 Multi-Media Room, Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee 37243 at 9:30 a.m. on the 18th day of November, 2005.

Written comments will be included in the hearing records if received by the close of business on November 17, 2005, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on November 17, 2005.

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 November 17, 2005, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. 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.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-3-27 NITROGEN OXIDES

NEW RULE

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1200-3-27-.11 CAIR NO_x Ozone Season Trading Program

1200-3-27-.11 CAIR NO_x OZONE SEASON TRADING PROGRAM

- (1) The provisions of this rule supersede the provisions of 1200-3-27-.06 (NO_x Budget Trading Program for State Implementation Programs) as follows:
 - (a) The provisions of this rule supersede all requirements of 1200-3-27-.06 for the control period beginning in 2009, and for each control period thereafter.
 - (b) The provisions of 1200-3-27-.06 shall expire on January 1, 2009.

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- (2) The provisions of 40 CFR Part 96 concerning the CAIR NO_x Ozone Season Trading Program are hereby adopted by reference with the following revisions:

- (a) The provisions of Sec. 96.304 as adopted for Tennessee are revised to read as follows:

Sec. 96.304 Applicability.

The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this rule:

1. Except as provided in parts 2. and 3. of this subparagraph, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine 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.
2. For 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 part 1. of this subparagraph starting on the day on which the unit first no longer qualifies as a cogeneration unit.
3. Any unit that is not a unit under parts 1. and 2. of this subparagraph and that has a maximum design heat input greater than 250 mmBtu/hr, except for units under this part 3. that meet the provisions for opting-out of the CAIR NO_x Ozone Season Trading Program as follows:
 - (i) A unit under this part 3. shall be subject only to the requirements of this subpart (i) if the unit has a federally enforceable permit that meets the requirements of item (i)(I) of this subpart and restricts the unit to burning only natural gas or fuel oil during a control period in 2009 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with subitems (i)(I)II. and III. of this subpart) that limits the unit's potential NO_x mass emissions for the control period to 25 tons or less. Notwithstanding part 3. of this subparagraph, starting with the effective date of such federally enforceable permit, the unit shall not be a CAIR NO_x Ozone Season Unit.
 - (I) For each control period under subpart (i) of this part, the federally enforceable permit must:
 - I. Restrict the unit to burning only natural gas or fuel oil.
 - II. Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions.
 - III. Require that the unit's potential NO_x mass emissions shall be calculated as follows:

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- A. Select the default NO_x emission rate in Table 2 of 40 CFR Sec. 75.19 that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in subitem (i)(1)I. of this subpart; and
 - B. Multiply the default NO_x emission rate under section (i)(1)III.A. of this subpart by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under 40 CFR Sec. 96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.
- IV. Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.
 - V. Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.
- (ii) The permitting authority that issues the federally enforceable permit with the fuel use restriction under subitem (i)(1)I. of this subpart and the operating hours restriction under subitems (i)(1)II. and III. of this subpart will notify the Administrator in writing of each unit under part 3. of this subparagraph whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority will also notify the Administrator in writing of each unit under this part 3. whose federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or which does not comply with any such restriction.
 - (iii) If, for any control period under subpart (i) of this part, the fuel use restriction under subitem (i)(1)I. of this subpart or the operating hours restriction under subitems (i)(1)II. and III. of this subpart is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under subpart (i) of this part or the operating hours restriction under subitems (i)(1)II. and III. of this subpart, the unit shall be a CAIR NO_x Ozone Season Unit, subject to the requirements of this rule.
- (b) The provisions of Sec. 96.340 as adopted for Tennessee are revised to read as follows:

Sec. 96.340 State trading budgets.

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1. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in parts (2)(a)1. or 2. of this rule for the control periods in 2009 through 2014 is 22,842 tons/season, and for the control period in 2015 and thereafter is 19,035 tons/season.
 2. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)3. of this rule for the control period in 2009 and thereafter is 5,666 tons/season.
- (c) The provisions of Sec. 96.342 as adopted for Tennessee are revised to read as follows:

Sec. 96.342 CAIR NO_x Ozone Season allowance allocations.

1. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in parts (2)(a)1. and (2)(a)2. of this rule:
 - (i) (I) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under subpart (ii) of this part for each CAIR NO_x Ozone Season unit identified in parts (2)(a)1. and (2)(a)2. of this rule will be:
 - I. For units commencing operation before January 1, 2001 the average of the 3 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 follows:
 - A. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - B. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - C. If the unit is not subject to section (i)(I)A. or B. of this subpart , the unit's control period heat input for such year is multiplied by 40 percent.
 - 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.
 - (II) I. A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subitem (i)(I)I. of this part , and a unit's total tons of NO_x emissions during a control period in a calendar year under item (iii)(III) of this part, 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.
 - II. A unit's converted control period heat input for a calendar year specified under subitem (i)(I)I. of this part equals:

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- A. Except as provided in section (i)(II)II.B. or C. of this part, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, 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 3,414 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.
- (ii) (I) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units identified in parts (2)(a)1. and (2)(a)2. of this rule that have a baseline heat input (as determined under subpart (i) of this part) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.340 (except as provided in subpart (iv) of this part).
 - (II) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under item (ii)(I) of this part in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under item (ii)(I) of this part by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.
- (iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in parts (2)(a)1. and (2)(a)2. of this rule that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under subpart (i) of this part), in accordance with the following procedures:
 - (I) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone

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Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.

- (II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. The CAIR NO_x Ozone Season allowance allocation request must be submitted on or before April 1 before the first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
- (III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.
- (IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season 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 items (iii)(II) and (III) of this part.
 - II. On or after April 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.
 - III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.
 - IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under

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subitem (iii)(IV)l. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under, and rounded to the nearest whole allowance as appropriate.

- V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

- (iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit identified in parts (2)(a)1. and (2)(a)2. of this rule that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under subpart (ii) of this part, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

2. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(a)3. of this rule:

- (i) For all CAIR NO_x Ozone Season units identified in paragraph (2)(a)3. of this rule, the heat input used for calculating NO_x allowance allocations for each CAIR Ozone Season NO_x unit shall be:
- (I) The heat input (in mmBtu) used for calculating NO_x Ozone Season allowance allocations shall be the unit's heat input for the control period that is four years before the control period for which the NO_x allocation is being calculated.
- (II) A unit's control period heat input and a unit's total tons of NO_x emissions during a control period in a calendar year under subpart 4.(iii) of this subparagraph, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 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 40 CFR part 75 for the year.
- (ii) For all CAIR NO_x Ozone Season units identified in paragraph (2)(a)3. of this rule, the permitting authority will allocate CAIR NO_x Ozone Season allowances in a state implementation plan to be submitted to EPA for approval.
- (iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that commenced operation, or are projected to commence operation, on or after January 1 of the period used to calculate heat input under subpart (i) of this part, in accordance with the following procedures:

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- (I) The permitting authority will establish a separate new unit set-aside for each control period. The set-aside for CAIR NO_x Ozone Season units identified in part (2)(a)3. of this rule shall be separate from the set-aside for CAIR NO_x Ozone Season Units identified in parts (2)(a)1. and (2)(a)2. of this rule. For CAIR NO_x Ozone Season Units identified in part (2)(a)3. of this rule, the allocation set-aside for new source growth will be the NO_x allowances remaining in the state trading program budget for CAIR NO_x Ozone Season units identified in part (2)(a)3. of this rule after allocations are set for all CAIR NO_x Ozone Season units under 40 CFR 96.340. For CAIR NO_x Ozone Season Units identified in part (2)(a)3. of this rule, the new unit set-aside will be established in a State Implementation Plan and submitted to the Administrator for approval.
- (II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. The CAIR NO_x Ozone Season allowance allocation request must be submitted on or before April 1 before the first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
- (III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding any of the three following limits:
 - I. 0.15 lb/mmBtu;
 - II. The allowable NO_x emissions under any state or federal construction or operating permit;
 - III. Any provision in or that has been submitted to the EPA for amendment to the state implementation plan.
- (IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season 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 items (iii)(II) and (III) of this part.
 - II. On or after April 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.

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- III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.
 - IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under, and rounded to the nearest whole allowance as appropriate.
 - V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances using the following formula and rounding to the nearest whole NO_x allowance as appropriate:

Unit's share of NO_x allowances remaining in allocation set-aside = (Total NO_x allowances remaining in allocation set-aside) x (Unit's NO_x allowance allocation) ÷ (State trading program budget excluding allocation set-aside)

where:

"Total NO_x allowances remaining in allocation set-aside" is the total number of NO_x allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies;

"Unit's NO_x allowance allocation" is the number of NO_x allowances allocated under item 2.(ii)(II) of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

"State trading program budget excluding allocation set-aside" is the State trading program budget apportioned to the unit type for the control period to which the allocation set-aside applies minus the allocation set-aside.

(3) PART 96--CAIR NO_x Ozone Season Trading Program

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Subpart AAAA – CAIR NO_x Ozone Season Trading Program General Provisions

§ 96.301 Purpose.

This subpart and subparts BBBB through IIII establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBBB through IIII as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

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Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x Ozone Season allowances issued under subpart EEEE of this part or § 51.123(aa)(2)(iii), (bb)(2)(iii) or (iv), or (dd)(3) or (4) of this chapter, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit or a new unit set-aside and, with regard to CAIR NO_x Ozone Season allowances issued under § 96.388, the determination by the permitting authority of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit.

Allowance transfer deadline means, for a control period, midnight of November 30, if it is a business day, or, if November 30 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_x Ozone Season emissions limitation for such control period in accordance with § 96.354.

Alternate CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season 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 subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

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 authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB and IIII of this part, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

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CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season 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 subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_x 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 this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EEEE of this part, § 96.388, or § 51.123(aa)(2)(iii), (bb)(2)(iii) or (iv), or (dd)(3) or (4) of this chapter to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by the permitting authority for a control period during 2003 through 2008 under the NO_x Budget Trading Program under § 51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in § 51.121(b)(2)(i)(E) of this chapter shall not be used in applying this definition. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that meet the requirements of § 51.121(p) of this chapter or § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter shall not be a CAIR NO_x Ozone Season allowance.

CAIR NO_x Ozone Season allowance deduction or deduct CAIR NO_x Ozone Season allowances means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_x Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x Ozone Season allowances under the CAIR NO_x Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_x Ozone Season Allowance Tracking System account means an account in the CAIR NO_x Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x Ozone Season allowances.

CAIR NO_x Ozone Season allowances held or hold CAIR NO_x Ozone Season allowances means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_x Ozone Season Allowance Tracking System account.

CAIR NO_x Ozone Season emissions limitation means, for a CAIR NO_x Ozone Season source, the tonnage equivalent of the CAIR NO_x Ozone Season allowances available for deduction for the source under § 96.354(a) and (b) for a control period.

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CAIR NO_x 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 this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and, except for purposes of § 96.305 and subpart EEEE of this part, a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under § 96.104 and a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_x Ozone Season Trading Program requirements applicable to a CAIR NO_x Ozone Season source, to each CAIR NO_x Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ source means a source that includes one or more CAIR SO₂ units.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO₂ unit means a unit that is subject to the CAIR SO₂ Trading Program under § 96.204 and a CAIR SO₂ opt-in unit under subpart III of this part.

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.

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:

- (1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or
- (2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-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

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- (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 § 96.305.
 - (i) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 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 CAIR NO_x Ozone Season unit under § 96.304 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), (2), or (3) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under § 96.304 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 96.304.
 - (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.

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- (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),(2), or (3) of this definition as appropriate.
- (3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.384(h) or § 96.387(b)(3), for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_x emissions rate and the heat input of the unit under § 96.384(b)(1)(i).
 - (i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 (3) 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), (2), or (3) of this definition as appropriate.
- (4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

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 § 96.305.
 - (i) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 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 CAIR NO_x Ozone Season unit under § 96.304 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), (2), or (3) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under § 96.304 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 96.304.
 - (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.

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- (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),(2), or (3) of this definition as appropriate.
- (3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.384(h) or § 96.387(b)(3), for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_x emissions rate and the heat input of the unit under § 96.384(b)(1)(i).
 - (i) For a unit with a date for commencement of operation as defined in paragraph (3) 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 (3) of this definition and that is subsequently replaced by a unit at the 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), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_x Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_x Ozone Season allowance allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_x Ozone Season emissions limitation in accordance with § 96.354.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHHH of this part 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 nitrogen oxides 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 continuous emission monitoring systems required under subpart HHHH of this part:

- (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 standard cubic feet per hour (scfh);
- (2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);
- (3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

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- (4) 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 H₂O;
- (5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
- (6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

Control period or ozone season means the period beginning May 1 of a calendar year, except as provided in § 96.306(c)(2), and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during a control period that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part 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.

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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.

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 subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, 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.

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_x Ozone Season unit or a CAIR NO_x Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

- (1) With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:
 - (i) Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;

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- (ii) Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or
 - (iii) Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season unit; or
- (2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season Trading Program in accordance with subpart CCCC of this part 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 CAIR NO_x Ozone Season allowances, the movement of CAIR NO_x Ozone Season allowances by the Administrator into or between CAIR NO_x Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with

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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 CAIR NO_x Ozone Season allowance, the unique identification number assigned to each CAIR NO_x Ozone Season 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 Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR NO_x Ozone Season Trading Program pursuant to § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act 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 Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x Ozone Season emissions limitation, total tons of nitrogen oxides 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 subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

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.

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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, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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 heating 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.

§ 96.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.

CO₂-carbon dioxide.

NO_x-nitrogen oxides.

hr-hour.

kW-kilowatt electrical.

kWh-kilowatt hour.

mmBtu-million Btu.

MWe-megawatt electrical.

MWh-megawatt hour.

O₂-oxygen.

ppm-parts per million.

lb-pound.

scfh-standard cubic feet per hour.

SO₂-sulfur dioxide.

H₂O-water.

yr-year.

§ 96.304 Applicability.

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The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part:

- (a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine 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) For 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.

§ 96.305 Retired unit exemption.

- (a)
 - (1) Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt-in unit shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this section, § 96.302, § 96.303, § 96.304, § 96.306(c)(4) through (8), § 96.307, and subparts BBBB and EEEE through GGGG of this part.
 - (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR 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 subpart CCCC of this part 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 nitrogen oxides, starting on the date that the exemption takes effect.
 - (2) The permitting authority will allocate CAIR NO_x Ozone Season allowances under subpart EEEE of this part 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

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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 CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Ozone Season 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 CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 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 CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, 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.

§ 96.306 Standard requirements.

(a) Permit Requirements.

- (1) The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall:
 - (i) Submit to the permitting authority a complete CAIR permit application under § 96.322 in accordance with the deadlines specified in § 96.321; and
 - (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
- (2) The owners and operators of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

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- (3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.
- (b) Monitoring, reporting, and recordkeeping requirements.
- (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.
 - (2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_x Ozone Season source with the CAIR NO_x Ozone Season emissions limitation under paragraph (c) of this section.
- (c) Nitrogen oxides ozone season emission requirements.
- (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.
 - (2) A CAIR NO_x Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter.
 - (3) A CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowance was allocated.
 - (4) CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with subpart EEEE of this part.
 - (5) A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 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 CAIR NO_x Ozone Season allowance does not constitute a property right.
 - (7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or

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from a CAIR NO_x Ozone Season unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_x Ozone Season unit.

- (d) Excess emissions requirements. If a CAIR NO_x Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_x Ozone Season emissions limitation, then:
 - (1) The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source shall surrender the CAIR NO_x Ozone Season allowances required for deduction under § 96.354(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
 - (2) Each ton 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.
- (e) Recordkeeping and reporting requirements.
 - (1) Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season 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 § 96.313 for the CAIR designated representative for the source and each CAIR NO_x Ozone Season 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 § 96.313 changing the CAIR designated representative.
 - (ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program.
 - (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program.
 - (2) The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under subpart HHHH of this part.
- (f) Liability.
 - (1) Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.

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- (2) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.
- (3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit shall also apply to the owners and operators of such unit.
- (g) Effect on other authorities. No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.307 Computation of time.

- (a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.308 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Ozone Season Trading Program are set forth in part 78 of this chapter.

Subpart BBBB – CAIR designated representative for CAIR NO_x Ozone Season sources

§ 96.310 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under § 96.311, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.
- (b) The CAIR designated representative of the CAIR NO_x Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and shall act in accordance with the certification statement in § 96.313(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, the CAIR 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 CAIR NO_x Ozone

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Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 96.313 for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.
- (e)
 - (1) Each submission under the CAIR NO_x Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR 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 CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.311 Alternate CAIR designated representative.

- (a) A certificate of representation under § 96.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.
- (c) Except in this section and §§ 96.302, 96.310(a) and (d), 96.312, 96.313, 96.351, and 96.382 whenever the term "CAIR designated representative" is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

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- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.
- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.
- (c) Changes in owners and operators.
 - (1) In the event a new owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under § 96.313, 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 CAIR designated representative and any alternate CAIR 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 CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.313 amending the list of owners and operators to include the change.

§ 96.313 Certificate of representation.

- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
 - (1) Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season 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 CAIR designated representative and any alternate CAIR designated representative.
 - (3) A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source.
 - (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative--

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- (i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source."
 - (ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season unit, or where a customer purchases power from a CAIR NO_x Ozone Season 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 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in accordance with the contract."
- (5) The signature of the CAIR designated representative and any alternate CAIR 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.

§ 96.314 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under § 96.313 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 § 96.313 is received by the Administrator.
- (b) Except as provided in § 96.312(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 CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Ozone Season Trading Program.

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- (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 CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

Subpart CCCC – Permits

§ 96.320 General CAIR NO_x Ozone Season Trading Program permit requirements.

- (a) For each CAIR NO_x Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart IIII of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, and CAIR SO₂ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.321 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR NO_x Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences operation.
- (b) Duty to Reapply. For a CAIR NO_x Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x Ozone Season source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR NO_x Ozone Season source;
- (b) Identification of each CAIR NO_x Ozone Season unit at the CAIR NO_x Ozone Season source; and
- (c) The standard requirements under § 96.306.

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§ 96.323 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.322.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.
- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 96.324 CAIR permit revisions.

Except as provided in § 96.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD – [Reserved]

Subpart EEEE – CAIR NO_x Ozone Season Allowance Allocations

§ 96.340 State trading budgets.

- (a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State Trading Budget for 2009-2014 (tons)	State Trading Budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238

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Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

- (b) If a permitting authority issues additional CAIR NO_x Ozone Season allowance allocations under § 51.123(aa)(2)(iii)(A) of this chapter, the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_x Ozone Season allowance allocations issued under § 51.123(aa)(2)(iii)(A) of this chapter for the year.

§ 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

- (a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.
- (2) If the permitting authority fails to submit to the Administrator the CAIR NO_x Ozone Season allowance allocations in accordance with paragraph (b)(1), the Administrator will assume that the allocations of CAIR NO_x Ozone Season 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.
- (c) (1) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a), (c), and (d), for the control period in 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 CAIR NO_x Ozone Season allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of CAIR NO_x Ozone Season 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 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_x Ozone Season unit that would otherwise be allocated CAIR NO_x Ozone Season allowances under § 96.342(a) and (b), as well as under § 96.342(a), (c), and (d), for the applicable control period will be assumed to be allocated no CAIR NO_x Ozone Season allowances under § 96.342(a), (c), and (d) for the applicable control period.

§ 96.342 CAIR NO_x Ozone Season allowance allocations.

- (a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_x Ozone Season unit will be:
- (i) For units commencing operation before January 1, 2001 the average of the 3 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 follows:
 - (A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - (B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - (C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.
 - (ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.
- (2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in 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.
- (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, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000

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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 3,414 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 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.340 (except as provided in paragraph (d) of this section).
 - (2) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.
- (c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:
 - (1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.
 - (2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. The CAIR NO_x Ozone Season allowance allocation request must be submitted

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on or before April 1 before the first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

- (3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.
- (4) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season 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 April 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.
 - (iv) If the amount of CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season 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 CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through

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2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

Subpart FFFF – CAIR NO_x Ozone Season Allowance Tracking System

§ 96.350 [Reserved]

§ 96.351 Establishment of accounts.

- (a) Compliance accounts. Except as provided in § 96.384(e), upon receipt of a complete certificate of representation under § 96.313, the Administrator will establish a compliance account for the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR 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 CAIR authorized account representative and any alternate CAIR 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 CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account;
 - (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative:
“I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season 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.”

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- (E) The signature of the CAIR authorized account representative and any alternate CAIR 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 CAIR 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 CAIR authorized account representative and any alternate CAIR 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 CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.
 - (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
 - (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

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- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
- (i) The CAIR 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 CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.
 - (ii) The alternate CAIR 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 CAIR 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 CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.
 - (iii)
 - (A) In the event a new person having an ownership interest with respect to CAIR NO_x Ozone Season 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 CAIR authorized account representative and any alternate CAIR 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 CAIR NO_x Ozone Season allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR 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 CAIR NO_x Ozone Season allowances in the general account to include the change.
- (4) Objections concerning CAIR authorized account representative.
- (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized

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account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Ozone Season Trading Program.

- (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season 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.

§ 96.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.353 Recordation of CAIR NO_x Ozone Season allowance allocations.

- (a) The Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at a source, as submitted by the permitting authority in accordance with § 96.341(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.341(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 CAIR NO_x Ozone Season source's compliance account under § 96.354, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.341(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 September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.341(c), for the control period in the year of the applicable deadline for recordation under this paragraph.
- (e) Serial numbers for allocated CAIR NO_x Ozone Season allowances. When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x Ozone Season allowance is allocated.

§ 96.354 Compliance with CAIR NO_x emissions limitation.

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- (a) Allowance transfer deadline. The CAIR NO_x Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_x Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowance transfer correctly submitted for recordation under § 96.360 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 § 96.361, of CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the control period, as follows:
 - (1) Until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_x Ozone Season units at the source for the control period; or
 - (2) If there are insufficient CAIR NO_x Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.
- (c)
 - (1) Identification of CAIR NO_x Ozone Season allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season source and the appropriate serial numbers.
 - (2) First-in, first-out. The Administrator will deduct CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then
 - (ii) Any CAIR NO_x Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.
- (d) Deductions for excess emissions.

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- (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons 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 CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, 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 CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.355 Banking.

- (a) CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under § 96.354, § 96.356, or subpart GGGG of this part.

§ 96.356 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.357 Closing of general accounts.

- (a) The CAIR 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 § 96.360 for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the Administrator may notify the CAIR 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

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20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x Ozone Season allowances into the account under § 96.360 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG – CAIR NO_x Ozone Season Allowance Transfers

§ 96.360 Submission of CAIR NO_x Ozone Season allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_x Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x Ozone Season 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 CAIR NO_x Ozone Season allowance that is in the transferor account and is to be transferred; and
- (c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.361 EPA recordation.

- (a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x Ozone Season allowance transfer, the Administrator will record a CAIR NO_x Ozone Season allowance transfer by moving each CAIR NO_x Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under § 96.360; and
 - (2) The transferor account includes each CAIR NO_x Ozone Season allowance identified by serial number in the transfer.
- (b) A CAIR NO_x Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.354 for the control period immediately before such allowance transfer deadline.
- (c) Where a CAIR NO_x Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.362 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x Ozone Season allowance transfer under § 96.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x Ozone Season allowance transfer that fails to meet the requirements of § 96.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

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- (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 CAIR NO_x Ozone Season allowance transfer for recording following notification of non-recording.

Subpart HHHH – Monitoring and Reporting

§ 96.370 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.302 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 “CAIR NO_x Ozone Season unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 96.302. The owner or operator of a unit that is not a CAIR NO_x Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x Ozone Season unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x Ozone Season unit shall:
- (1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);
 - (2) Successfully complete all certification tests required under § 96.371 and meet all other requirements of this subpart and 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 CAIR NO_x Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.
 - (2) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 96.374(d), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

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- (ii) May 1, 2008, if the compliance date under paragraph (b)(2)(i) is before May 1, 2008.
 - (3) For the owner or operator of a CAIR NO_x Ozone Season unit that commences operation on or after July 1, 2007 and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or
 - (ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.
 - (4) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 96.374(d), 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 or add-on NO_x emissions controls.
 - (5) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:
 - (i) 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 or add-on NO_x emissions controls; or
 - (ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.
 - (6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_x Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 96.384(b).
 - (7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section and solely for purposes of § 96.306(c)(2), for the owner or operator of a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, by the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in § 96.384(g).
- (c) Reporting data.
- (1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_x Ozone Season 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 NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other

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parameters required to determine NO_x mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

- (2) The owner or operator of a CAIR NO_x unit that does not meet the applicable compliance date set forth in paragraph (b)(4) 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 § 75.74(c)(7) of this chapter or subpart D or subpart H of, or appendix D or appendix E to, 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)(4) of this section.

(d) Prohibitions

- (1) No owner or operator of a CAIR NO_x Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.375.
- (2) No owner or operator of a CAIR NO_x Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (3) No owner or operator of a CAIR NO_x Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (4) No owner or operator of a CAIR NO_x Ozone Season 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 § 96.305 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - (iii) The CAIR 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 § 96.371(d)(3)(i).

§ 96.371 Initial certification and recertification procedures.

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- (a) The owner or operator of a CAIR NO_x Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.370(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, appendix D, and appendix E 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 § 96.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12, § 75.17, or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.375(a) to determine whether the approval applies under the CAIR NO_x Ozone Season Trading Program.
- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 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 (e) or (f) of this section respectively.
 - (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.370(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 § 96.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.
 - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x 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 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. Any

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fuel flowmeter systems, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 96.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

- (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.370(a)(1). For recertifications, replace the words “certification” and “initial certification” with the word “recertification”, replace the word “certified” with the word “recertified,” and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
 - (i) Notification of certification. The CAIR 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 § 96.373.
 - (ii) Certification application. The CAIR 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 CAIR NO_x Ozone Season 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 (d)(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 (d)(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 CAIR NO_x Ozone Season Trading Program.
 - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.
 - (B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the

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notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(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 (d)(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 (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.
- (D) Audit decertification. The permitting authority or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.372(b).
- (v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(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), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:
 - (1) For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ 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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- (4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(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 or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- (e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.
- (f) Certification/recertification procedures for alternative monitoring systems. The CAIR 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.

§ 96.372 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 or subpart H of, or appendix D or appendix E to, 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 § 96.371 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 or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator 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 or the Administrator 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

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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 § 96.371 for each disapproved monitoring system.

§ 96.373 Notifications.

The CAIR designated representative for a CAIR NO_x Ozone Season unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.374 Recordkeeping and reporting.

- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 96.310(e)(1).
- (b) Monitoring Plans. The owner or operator of a CAIR NO_x Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 96.383 and 96.384(a).
- (c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.371, including the information required under § 75.63 of this chapter.
- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:
 - (1) If the CAIR NO_x Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_x mass emissions) for such unit for the entire year and shall report the NO_x mass emissions data and heat input data for such 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, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008; or
 - (ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008.
 - (2) If the CAIR NO_x Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative shall either:
 - (i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

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- (ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in § 75.74(c) of this chapter) and report NO_x mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;
 - (B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date.
- (2) The CAIR 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 § 75.73(f) of this chapter.
- (3) For CAIR NO_x Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program or CAIR SO₂ 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 NO_x mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR 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 subpart and part 75 of this chapter, including the quality assurance procedures and specifications;
 - (2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions; and
 - (3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§ 96.375 Petitions.

- (a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement

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of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

- (b) (1) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.
- (2) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.376 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_x Ozone Season unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart IIII - CAIR NO_x Ozone Season Opt-in Units

§ 96.380 Applicability.

A CAIR NO_x Ozone Season opt-in unit must be a unit that:

- (a) Is located in the State;
- (b) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;
- (c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 96.381 General.

(a) Except as otherwise provided in §§ 96.301 through 96.304, §§ 96.306 through 96.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_x Ozone Season opt-in unit shall be treated as a CAIR NO_x Ozone Season unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

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§ 96.382 CAIR designated representative.

Any CAIR NO_x Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x Ozone Season units.

§ 96.383 Applying for CAIR opt-in permit.

- (a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.386 (f) and (g), and, in order to apply, must submit the following:
 - (1) A complete CAIR permit application under § 96.322;
 - (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;
 - (ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
 - (iii) Vents all of its emissions to a stack; and
 - (iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.322;
 - (3) A monitoring plan in accordance with subpart HHHH of this part;
 - (4) A complete certificate of representation under § 96.313 consistent with § 96.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and
 - (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x Ozone Season allowances under § 96.388(c) (subject to the conditions in §§ 96.384(h) and 96.386(g)).
- (b) Duty to reapply.
 - (1) The CAIR designated representative of a CAIR NO_x Ozone Season opt-in unit shall submit a complete CAIR permit application under § 96.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
 - (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_x Annual Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_x unit under § 96.304, the CAIR NO_x opt-in unit shall remain subject to the requirements for a CAIR NO_x opt-in unit, even if the CAIR designated representative for the CAIR NO_x opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

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§ 96.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.383 is submitted in accordance with the following:

- (a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.
- (b) Monitoring and reporting.
 - (1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 96.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.386.
 - (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.
- (2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.
- (c) Baseline heat input. The unit's baseline heat rate shall equal:
 - (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

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- (d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:
- (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or
 - (3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 and meets the elements certified in § 96.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x Ozone Season opt-in unit unless the source already has a compliance account.
- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 or meets the elements certified in § 96.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.
- (g) Date of entry into CAIR NO_x Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x Ozone Season opt-in unit, and a CAIR NO_x Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR NO_x Ozone Season opt-in unit.
- (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c) and such unit is repowered after its date of entry into the CAIR NO_x Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x Ozone Season opt-in unit replacing the original CAIR NO_x Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline

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heat input, and baseline NO_x emission rate as the original CAIR NO_x Ozone Season opt-in unit, and the original CAIR NO_x Ozone Season opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_x Ozone Season unit.

§ 96.385 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:
 - (1) All elements required for a complete CAIR permit application under § 96.322;
 - (2) The certification in § 96.383(a)(2);
 - (3) The unit's baseline heat input under § 96.384(c);
 - (4) The unit's baseline NO_x emission rate under § 96.384(d);
 - (5) A statement whether the unit is to be allocated CAIR NO_x Ozone Season allowances under § 96.388(c) (subject to the conditions in §§ 96.384(h) and 96.386(g));
 - (6) A statement that the unit may withdraw from the CAIR NO_x Ozone Season Trading Program only in accordance with § 96.386; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.387.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_x Ozone Season opt-in unit covered by the CAIR opt-in permit.
- (c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.386 Withdrawal from CAIR NO_x Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x Ozone Season opt-in unit may withdraw from the CAIR NO_x Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit in accordance with paragraph (d) of this section.

- (a) Requesting withdrawal. In order to withdraw a CAIR opt-in unit from the CAIR NO_x Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_x Ozone Season Trading Program under § 96.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR NO_x Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

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- (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x Ozone Season opt-in unit must meet the requirement to hold CAIR NO_x Ozone Season allowances under § 96.306(c) and cannot have any excess emissions.
 - (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x Ozone Season opt-in unit may submit a CAIR NO_x Ozone Season allowance transfer for any remaining CAIR NO_x Ozone Season allowances to another CAIR NO_x Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.
- (c) Notification.
- (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit that the CAIR NO_x Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_x opt-in unit shall continue to be a CAIR NO_x Ozone Season opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_x Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR NO_x Ozone Season Trading Program. Once a CAIR NO_x Ozone Season opt-in unit withdraws from the CAIR NO_x Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.383 for such CAIR NO_x Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became

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effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.384.

- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_x Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_x opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c).

§ 96.387 Change in regulatory status.

- (a) Notification. If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x Ozone Season opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, the permitting authority will revise the CAIR NO_x Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.323 as of the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304.
 - (2) (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit that becomes a CAIR NO_x Ozone Season unit under § 96.304, CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) Any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304; and
 - (B) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not September 30, the CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.
 - (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x Ozone Season unit that becomes a CAIR NO_x Ozone Season unit under § 96.304 contains the CAIR NO_x Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.
- (3) (i) For every control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, the CAIR NO_x

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Ozone Season opt-in unit will be treated, solely for purposes of CAIR NO_x Ozone Season allowance allocations under § 96.342, as a unit that commences operation on the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 and will be allocated CAIR NO_x Ozone Season allowances under § 96.342.

- (ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not May 1, the following amount of CAIR NO_x Ozone Season allowances will be allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304:
 - (A) The amount of CAIR NO_x Ozone Season allowances otherwise allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period multiplied by;
 - (B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, divided by the total number of days in the control period; and
 - (C) Rounded to the nearest whole allowance as appropriate.

§ 96.388 NO_x Ozone Season allowance allocations to CAIR NO_x Ozone Season opt-in units.

(a) Timing requirements.

- (1) When the CAIR opt-in permit is issued under § 96.384(e), the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), in accordance with paragraph (b) or (c) of this section.
 - (2) By no later than July 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.
- (b) Calculation of allocation. For each control period for which a CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures:
- (1) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:
 - (i) The CAIR NO_x Ozone Season opt-in unit's baseline heat input determined under § 96.384(c); or

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- (ii) The CAIR NO_x Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).
 - (2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:
 - (i) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d) and multiplied by 70 percent; or
 - (ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.
 - (3) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under this paragraph (subject to the conditions in §§ 96.384(h) and 96.386(g)), the permitting authority will allocate to the CAIR NO_x Ozone Season opt-in unit as follows:
- (1) For each control period in 2009 through 2014 for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:
 - (A) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or
 - (B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).
 - (iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
 - (2) For each control period in 2015 and thereafter for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,

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- (i) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:
 - (A) 0.15 lb/mmBtu;
 - (B) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or
 - (C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.
 - (iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (d) Recordation.
- (1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(1) of this section.
 - (2) By September 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(2) of this section.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of September, 2005

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 Nashville Public Library Auditorium, 1st Floor, 615 Church Street, Nashville, Tennessee 37219 at 9:30 a.m. C.S.T. on the 16th day November 2005.

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 RULES

Subparagraphs (r), (u), and (v) of paragraph (1) of rule 1200-13-1-.03 Amount, Duration, and Scope of Assistance is deleted in their entirety and replaced with new subparagraphs which shall read as follows:

- (r) Intermediate Care Facility services for individuals age 65 or older in institutions for tuberculosis will be covered for those who require institutional health services below the level of care rendered in skilled nursing facilities.
- (u) Intermediate Care facility services for individuals age 65 or older in institutions for mental diseases will be covered for those who require institutional health services below the level of care rendered in skilled nursing facilities.
- (v) Intermediate Care Facility services other than services in an institution for tuberculosis or mental diseases will be covered.

Subparagraph (b) of paragraph (4) of rule 1200-13-1-.06 Provider Reimbursement is deleted in its entirety and replaced with a new subparagraph (b) which shall read as follows:

- (b) A Level 1 nursing facility (NF) shall be reimbursed in accordance with this paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:
 - 1. Effective October 1, 2005, reimbursement will be made for up to a total of 10 days per state fiscal year while the resident is hospitalized or absent from the facility on therapeutic leave. The following conditions must be met in order for a bed hold reimbursement to be made under this provision:
 - (i) The resident intends to return to the NF.

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- (ii) For hospital leave days:
 - (I) Each period of hospitalization is physician ordered and so documented in the patient's medical record in the NF; and
 - (II) The hospital provides a discharge plan for the resident.
- (iii) Therapeutic leave days, when the resident is absent from the facility on a therapeutic home visit or other therapeutic absence, are provided pursuant to a physician's order.
- (iv) At least 85% of all other beds in the NF are occupied at the time of the hospital admission or therapeutic absence.

Subparagraph (c) of paragraph (32) of rule 1200-13-1-.06 Provider Reimbursement is deleted in its entirety and replaced with a new subparagraph (c) which shall read as follows:

- (c) An ICF/MR will be reimbursed in accordance with this paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:
 - 1. For days not to exceed 15 days per occasion while the recipient is hospitalized and the following conditions are met:
 - (i) The resident intends to return to the ICF/MR.
 - (ii) The hospital provides a discharge plan for the resident.
 - (iii) At least 85% of all other beds in the ICF/MR certified at the recipient's designated level of care (i.e., intensive training, high personal care or medical), when computed separately, are occupied at the time of hospital admission.
 - (iv) Each period of hospitalization must be physician ordered and so documented in the patient's medical record in the ICF/MR.
 - 2. For days not to exceed 60 days per state fiscal year and limited to 14 days per occasion while the recipient, pursuant to a physician's order, is absent from the facility on a therapeutic home visit or other therapeutic absence.

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 20th day of September, 2005. (09-22)

RULEMAKING HEARINGS

THE 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 Nashville Public Library Auditorium, 1st Floor, 615 Church Street, Nashville, Tennessee 37219 at 9:30 a.m. C.S.T. on the 16th day November 2005.

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 (5) of rule 1200-13-1-.06 Provider Reimbursement is deleted in its entirety and subsequent paragraphs renumbered accordingly.

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 20th day of September, 2005. (09-23)

RULEMAKING HEARINGS

THE 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 Nashville Public Library Auditorium, 1st Floor, 615 Church Street, Nashville, Tennessee 37219 at 9:30 a.m. C.S.T. on the 16th day November 2005.

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 RULES

Subparagraphs (j) and (k) of paragraph (7) of rule 1200-13-14-.02 Eligibility are deleted in their entirety and replaced with new subparagraph (j) and (k) which shall read as follows:

- (j) The Bureau will process the completed medical eligibility packet. Evaluation of the completed packet will be made within thirty (30) days of receipt by the Bureau. The Bureau will deem the applicant insurable or uninsurable based on health insurance underwriting guidelines. Applicants who are deemed to be insurable by the contracted carrier will not be eligible for TennCare Standard. This applicant will receive a denial notice from the Bureau, which includes his/her appeal rights. Applicants denied for TennCare Standard as medically eligible have thirty (30) days from receipt of the denial letter to appeal. Appeals received by the Bureau after thirty (30) days will be considered untimely and will not be forwarded for hearing.
- (k) Applicants deemed uninsurable will be approved as medically eligible. The Bureau will send the applicant an approval notice with a fixed end date of coverage, before which time the enrollee must complete the renewal/reapplication process.

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 30th day of September, 2005. (09-43)

RULEMAKING HEARINGS

DEPARTMENT OF HEALTH - 1200 BOARD FOR LICENSING HEALTH CARE FACILITIES DIVISION OF HEALTH CARE FACILITIES

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. 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 Tennessee Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 15th day of November, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities 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 Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-1 STANDARDS FOR HOSPITALS

CHAPTER 1200-8-2 STANDARDS FOR PRESCRIBED CHILD CARE CENTERS

CHAPTER 1200-8-6 STANDARDS FOR NURSING HOMES

CHAPTER 1200-8-10 STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS

CHAPTER 1200-8-11 STANDARDS FOR HOMES FOR THE AGED

CHAPTER 1200-8-15 STANDARDS FOR RESIDENTIAL HOSPICES

CHAPTER 1200-8-17 ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL REHABILITATION TREATMENT FACILITIES

CHAPTER 1200-8-22 ALCOHOL AND OTHER DRUGS OF ABUSE HALFWAY HOUSE TREATMENT FACILITIES

RULEMAKING HEARINGS

CHAPTER 1200-8-23 ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL DETOXIFICATION TREATMENT FACILITIES

CHAPTER 1200-8-24 STANDARDS FOR BIRTHING CENTERS

CHAPTER 1200-8-25 STANDARDS FOR ASSISTED-CARE LIVING FACILITIES

CHAPTER 1200-8-26 STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES

CHAPTER 1200-8-27 STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOSPICE SERVICES

CHAPTER 1200-8-28 STANDARDS FOR HIV SUPPORTIVE LIVING FACILITIES

CHAPTER 1200-8-32 STANDARDS FOR END STAGE RENAL DIALYSIS CLINICS

CHAPTER 1200-8-34 STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING PROFESSIONAL SUPPORT SERVICES

AMENDMENTS

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraph (89) in its entirety and substituting instead the following language, so that as amended, the new paragraph (89) shall read:

- (89) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255, and 68-11-1802.

Rule 1200-8-1-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.

RULEMAKING HEARINGS

- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-2-.01, Definitions, is amended by deleting paragraph (76) in its entirety and substituting instead the following language, so that as amended, the new paragraph (76) shall read:

- (76) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, 68-11-224, and 68-11-1802.

Rule 1200-8-2-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-6-.01, Definitions, is amended by deleting paragraph (68) in its entirety and substituting instead the following language, so that as amended, the new paragraph (68) shall read:

- (68) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-6-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-10-.01, Definitions, is amended by deleting paragraph (70) in its entirety and substituting instead the following language, so that as amended, the new paragraph (70) shall read:

- (70) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, 68-11-224, and 68-11-1802.

Rule 1200-8-10-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

RULEMAKING HEARINGS

Rule 1200-8-11-.01, Definitions, is amended by deleting paragraph (49) in its entirety and substituting instead the following language, so that as amended, the new paragraph (49) shall read:

- (49) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.

Rule 1200-8-11-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraph (82) in its entirety and substituting instead the following language, so that as amended, the new paragraph (82) shall read:

- (82) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-15-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.

RULEMAKING HEARINGS

- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-17-.01, Definitions, is amended by deleting paragraph (71) in its entirety and substituting instead the following language, so that as amended, the new paragraph (71) shall read:

- (71) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-17-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-22-.01, Definitions, is amended by deleting paragraph (74) in its entirety and substituting instead the following language, so that as amended, the new paragraph (74) shall read:

- (74) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-22-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-23-.01, Definitions, is amended by deleting paragraph (74) in its entirety and substituting instead the following language, so that as amended, the new paragraph (74) shall read:

- (74) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-23-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

RULEMAKING HEARINGS

Rule 1200-8-24-.01, Definitions, is amended by deleting paragraph (51) in its entirety and substituting instead the following language, so that as amended, the new paragraph (51) shall read:

- (51) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-24-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-25-.01, Definitions, is amended by deleting paragraph (61) in its entirety and substituting instead the following language, so that as amended, the new paragraph (61) shall read:

- (61) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-25-.12, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.

RULEMAKING HEARINGS

- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-26-.01, Definitions, is amended by deleting paragraph (65) in its entirety and substituting instead the following language, so that as amended, the new paragraph (65) shall read:

- (65) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-26-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-27-.01, Definitions, is amended by deleting paragraph (70) in its entirety and substituting instead the following language, so that as amended, the new paragraph (70) shall read:

- (70) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-27-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-28-.01, Definitions, is amended by deleting paragraph (79) in its entirety and substituting instead the following language, so that as amended, the new paragraph (79) shall read:

- (79) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.

Rule 1200-8-28-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

RULEMAKING HEARINGS

Rule 1200-8-32-.01, Definitions, is amended by deleting paragraph (68) in its entirety and substituting instead the following language, so that as amended, the new paragraph (68) shall read:

- (68) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1802.

Rule 1200-8-32-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.
- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

Rule 1200-8-34-.01, Definitions, is amended by deleting paragraph (57) in its entirety and substituting instead the following language, so that as amended, the new paragraph (57) shall read:

- (57) Universal Do Not Resuscitate Order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The Physician Order for Scope of Treatment (POST) form promulgated by the Board for Licensing Health Care Facilities as a mandatory form shall serve as the Universal DNR according to these rules.

Authority: T.C.A. §§4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-34-.13, Policies and Procedures for Health Care Decision-Making, is amended by deleting paragraph (5) and subparagraph (30)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and subparagraph (30)(a) shall read:

- (5) A facility shall use the mandatory advance directive form that meets the requirements of the Tennessee Health Care Decisions Act and has been developed and issued by the Board for Licensing Health Care Facilities.

RULEMAKING HEARINGS

- (30) (a) The Physicians Order for Scope of Treatment (POST) form, a mandatory form meeting the provisions of the Health Care Decision Act and approved by the Board for Licensing Health Care Facilities, shall be used as the Universal Do Not Resuscitate Order by all facilities. A universal do not resuscitate order (DNR) may be used by a physician for his/her patient with whom he/she has a physician/patient relationship, but only:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1803, 68-11-1804, 68-11-1806 through 68-11-1810, 68-11-1813, and 68-11-1814.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of September, 2005. (09-28)

RULEMAKING HEARINGS

DEPARTMENT OF HEALTH - 1200 BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. 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 14th day of December, 2005.

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 1200-30-1-.04, Qualifications for Licensure, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

- (1) (e) An applicant shall successfully complete the written examination required by Rule 1200-30-1-.08. The applicant shall also authorize the written examination provider and/or the testing agency to send his/her examination scores directly to the Board's administrative office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.05, Licensure Process, is amended by deleting part (1) (a) 11. in its entirety and substituting instead the following language, so that as amended, the new part (1) (a) 11. shall read:

- (1) (a) 11. An applicant shall successfully complete the written examination required by Rule 1200-30-1-.08 prior to submitting an application for licensure. An applicant shall include a completed jurisprudence examination, as required by Rule 1200-30-1-.08, when his/her completed application for licensure is returned to the Board's administrative office. An applicant shall be scheduled to take the oral examination, as required by Rule 1200-30-1-.08, when the Board has determined that the applicant's application is complete and successful completion of the written and jurisprudence examinations has been verified.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

RULEMAKING HEARINGS

Rule 1200-30-1-.07, Application Review, Approval, Denial, Interview, is amended by deleting part (8) (a) 2. in its entirety and substituting instead the following language, so that as amended, the new part (8) (a) 2. shall read:

- (8) (a) 2. The applicant fails to pass the oral examination within twelve (12) months after being notified of eligibility.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.07, Application Review, Approval, Denial, Interview, is amended by deleting paragraph (6) in its entirety and renumbering the remaining paragraphs accordingly:

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.08, Examinations, is amended by deleting subparagraph (1) (a) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting subparagraphs (2) (a) and (2) (c) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a) and (2) (c) shall read:

- (2) (a) An oral examination is required for each applicant other than those applying by reciprocity. The applicant shall be eligible to sit for the oral examination only after the Board has determined that the applicant's application is complete and successful completion of the written and jurisprudence examinations has been verified.
- (2) (c) An oral examination is scheduled for each applicant as soon as reasonable after the Board has determined that the applicant's application is complete and successful completion of the written and jurisprudence examinations has been verified. Notification of the test date and site of the oral examination will be provided to an applicant in writing from the Board at least thirty (30) days prior to the oral examination date.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

Rule 1200-30-1-.12, Continuing Education, is amended by deleting subparagraph (3) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (a) shall read:

- (3) (a) All providers of continuing education not authorized by paragraph (2) must request and receive approval of their program content by the Board to fulfill the continuing education requirements set forth in this rule. Providers who intend to offer more than one (1) presentation of the same course, event, or activity during one (1) calendar year may combine in a single application the information required by subparagraph (3) (b) for the multiple presentations.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605, and 68-24-606.

Rule 1200-30-1-.15, Disciplinary Actions and Civil Penalties, is amended by deleting paragraph (8) in its entirety and renumbering the present paragraph (9) as the new paragraph (8).

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

RULEMAKING HEARINGS

Rule 1200-30-1-.16, Board Meetings, Officers, Consultants, and Records, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (4) and (5), so that as amended, the new catchline and the new paragraphs (4) and (5) shall read:

1200-30-1-.16 BOARD MEETINGS, CONSULTANTS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (4) Declaratory orders. The Board adopts, as if fully set out herein, rule 1200-10-1-.11 of the Division of Health Related Boards, as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to the rule and not by the Division. Declaratory order petition forms can be obtained from the Board's administrative office.
- (5) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-223, 4-5-224, 4-5-225, 63-1-138, 68-24-605, 68-24-606, and Public Chapter 234 of the Public Acts of 2005.

Rule 1200-30-1-.17, Advertising, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1) through (5):

- (1) Definitions
 - (a) Advertising - Includes but is not limited to paid or unpaid public statements, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.
 - (b) Licensee - Any person holding a license to practice as a Licensed Alcohol and Drug Abuse Counselor 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.
- (2) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical conduct, and subject the licensee to disciplinary action pursuant to Rule 1200-30-1-.15:
 - (a) Claims that the services performed, personnel employed, 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 degree.
 - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.

RULEMAKING HEARINGS

- (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 materials fact or law without which the advertisement would be deceptive or misleading.
 - (k) Misrepresentation of credentials, training, experience, or ability.
 - (l) Failure to include the corporation, partnership or individual name, address, and telephone number of licensees 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 a directory listing all licensees practicing at that location.
 - (m) Failure to disclose the fact of giving compensation or anything of value to representative 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.
 - (n) 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.
 - (o) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (p) 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.
 - (q) Making false, deceptive, misleading or fraudulent statements regarding fees.
- (3) Advertising Records and Responsibility

RULEMAKING HEARINGS

- (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 or certified 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 Board 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.
- (4) Advertising Conduct
- (a) Licensees who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.
 - (b) If licensees learn of deceptive statements about their work made by others, licensees make reasonable efforts to correct such statements.
 - (c) Licensees do not compensate employees of press, radio, television or other communication media in return for publicity in a news item.
 - (d) A paid advertisement relating to the licensee's activities must be identified as such, unless it is already apparent from the context.
- (5) 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, 68-24-605, 68-24-606, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of September, 2005. (09-21)

RULEMAKING HEARINGS

The Tennessee Department of Human Services - 1240
Child Support Services Division

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the following locations:

Washington County Department of Human Services Conference Room, 103 East Walnut Street, Johnson City, Tennessee, at 6:30 PM Eastern Time on November 16, 2005;

Knoxville State Office Building, 7th Floor Conference Room A, 531 Henley Street, Knoxville, Tennessee, at 6:30 PM Eastern Time on November 17, 2005;

Chattanooga State Office Building 1st Floor Auditorium, 540 McCallie Avenue, Chattanooga, Tennessee, at 6:30 PM Eastern Time on November 21, 2005;

Putnam County Department of Human Services Conference Room, 269-E South Willow Avenue, Cookeville, Tennessee, at 6:30 PM Central Time on November 22, 2005;

Citizens Plaza State Office Building, Second Floor Boardroom, 400 Deaderick Street, Nashville, Tennessee, at 6:30 PM Central Time on November 28, 2005;

Maury County Department of Human Services Conference Room, 1400 College Park Drive, Suite B, Columbia, Tennessee, at 6:30 PM Central Time on November 29, 2005;

Obion County Department of Human Services' Conference Room at 1416 Stad Avenue Union City, TN 38261 at 6:30 PM Central Time on November 29, 2005;

Lowell Thomas State Office Building, Suite 210, Conference Room, , 225 Martin Luther King Jr. Drive, Jackson, Tennessee, at 6:30 PM Central Time on November 30, 2005;

Donnelley J. Hill State Office Building, Second Floor Auditorium, 170 North Main Street, Memphis, Tennessee, at 6:30 PM Central Time on December 1, 2005.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Department of Human Services 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 such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Fran McKinney, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)- (800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: Kim Beals, Assistant General Counsel, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

RULEMAKING HEARINGS

SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT SERVICES DIVISION

1240-2-4
CHILD SUPPORT GUIDELINES

AMENDMENTS

Rule 1240-2-4-.05, Modification of Child Support Orders, is amended by deleting paragraph (7) in its entirety.

Authority: *T.C.A. §§ 4-5-202; 36-5-101(a)(1) and (e); 36-5-103(f); 71-1-105(12), (16); 71-1-132; 42 U.S.C. § 667; 45 C.F.R. § 302.56, 303.8.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2005. (09-48)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 DIVISION OF MEDICAL SERVICES

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor, Board Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CDT on, Thursday, November 17, 2005.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Human Services 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 of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Fran McKinney, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563 (TTY)-(800) 270-1349.

For a copy the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1240-3-3 TECHNICAL AND FINANCIAL ELIGIBILITY REQUIREMENTS FOR MEDICAID

AMENDMENTS

Rule 1240-3-3-.03, Resource Limitations For Categorically Needy, is amended by inserting a new Paragraph (7) and renumbering the current Paragraph (7) as Paragraph (8), so that, as amended the new Paragraph (7) shall read as follows:

- (7) Qualified Income Trust (QIT).
 - (a) Effective July 1, 2005, individuals who are receiving or will receive nursing facility services or home and community based services (HCBS) and whose income exceeds the Medicaid Income Cap (MIC) may establish an income trust, referred to as a Qualified Income Trust (QIT) or "Miller Trust". Funds placed in a QIT that meets the standards set forth in paragraph (7) are not treated as available resources or income for purposes of determining the individual's Medicaid eligibility.
 - (b) A QIT is a trust consisting only of the individual's pension income, Social Security Income, and other monthly income that is created for the purpose of establishing income eligibility for Medicaid coverage when an individual is or soon will be confined to a nursing facility, HCBS or ICF/MR waiver program.

RULEMAKING HEARINGS

- (c) An individual is only eligible to establish a QIT if his or her income is above the level at which he or she would be financially eligible for nursing facility, HCBS, or ICF/MR care under Medicaid, but below the statewide average Nursing Facility (NF) private pay rate for Level 1 care.
 - 1. The initial average NF private rate will be computed by the Comptroller's Office based on data submitted to the Comptroller's Office in the most recent complete set of nursing facility cost reports. Beginning on July 1, 2006, this amount will be trended forward annually by the Medicare Economic Index (MEI).
 - 2. An individual whose income level would otherwise preclude establishment of a QIT under subparagraph (c) may, in the sole discretion of the Department of Human Services, be permitted to establish a QIT for purposes of meeting the Medicaid eligibility criteria, if denying the individual Medicaid eligibility would otherwise result in undue hardship. Undue hardship will be considered in circumstances where the individual's income is over the allowable limit to establish a QIT but below the cost of care at the private pay rate and there are no other resources available to the patient and discharge from the facility would endanger the patient's life and/or health.
- (d) A QIT must meet the following criteria:
 - 1. The trust must be irrevocable and cannot be modified or amended in whole or in part by the Grantor at any time. However, the Trustee or a court of competent jurisdiction shall have the right and jurisdiction to modify any provision of the trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance.
 - 2. Other than disbursements under Part 3 below, each month the Trustee may only make disbursements from the trust for:
 - (i) A personal needs allowance up to the amount recognized under Tennessee Medicaid policies. As of January 1, 2005, this amount is Forty Dollars (\$40) per month;
 - (ii) Up to Twenty Dollars (\$20) in necessary expenses for management of the trust (i.e., bank charges);
 - (iii) A spousal income allocation in the amount permitted under Tennessee Medicaid policies;
 - (iv) Expenses for health insurance premiums for health insurance coverage of the Grantor other than Medicaid; and
 - (v) Expenses for qualifying medical or remedial care received by the Grantor, to the extent such care is recognized under Tennessee law as provided in Department of Human Services State Rule 1240-3-3-.04(2)(d) but not covered as medical assistance under the State's Medicaid program.
 - 3. Each month the Trustee shall distribute the entire amount of income remaining in the trust after any disbursements made under Part 2 above to the State of Tennessee, Bureau of TennCare (or directly to the nursing facility or HCBS provider, as directed by the Bureau of TennCare), up to the total amount of expenditures for medical assistance for the Grantor.

RULEMAKING HEARINGS

4. The sole beneficiaries of the trust are the Grantor for whose benefit the trust is established and the State of Tennessee (Bureau of TennCare). The trust terminates upon the death of the Grantor, or if the trust is no longer required to establish Medicaid eligibility in the State of Tennessee, if nursing facility or HCBS is no longer medically necessary for the Grantor, or if the Grantor is no longer receiving such services.
5. The trust must provide that upon the death of the Grantor or termination of the trust, whichever occurs sooner, the State of Tennessee (Bureau of TennCare) shall receive all amounts remaining in the trust up to the total amount of medical assistance paid by the State on behalf of the individual.
6. Amounts remaining in the trust that are owed to the State must be paid to the Bureau of TennCare within three (3) months after the death of the individual or termination of the trust, whichever is sooner, along with an accounting of the disbursements from the trust. The Bureau of TennCare may grant an extension if a written request is submitted within two months of the termination of the trust.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102 and 71-5-109; and 42 U.S.C. §§ 1396 et seq. and 42 U.S.C. § 1396p(d)(4)(B) and 42 U.S.C. § 1396p(d)(5).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2005. (09-40)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 PREVAILING WAGE COMMISSION

There will be a hearing before the Prevailing Wage Commission to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated §12-4-415. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated §4-5-204 and will take place in the hearing room of the Andrew Johnson Tower on the second floor located at 710 James Robertson Parkway, Nashville, Tennessee 37243 at 1:00 p.m. CST on the 8th day of December, 2005.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Prevailing Wage Commission 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 Prevailing Wage Commission to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Department of Labor and Workforce Development's ADA Coordinator, Jewel Crawford, at the Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower, Eighth Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing, contact: Mary Ellen Grace, Director of Labor Standards Division, Tennessee Department of Labor and Workforce Development, Parkway Towers, Suite 1606, 404 James Robertson Parkway, Nashville, Tennessee 37243-0665, (615) 532-1357.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0800-3-2-.01 Definitions is amended by deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

0800-3-2-.01 DEFINITIONS.

- (1) The terms below shall have the following clarifying definitions in addition to those contained in T.C.A. §12-4-402 of the Prevailing Wage Act, for the purpose of construing the Act and these rules and regulations:
 - (a) "Apprentices" means those persons registered individually under a bona fide apprenticeship program registered with the Bureau of Apprenticeship and Training of the United States Department of Labor. The state agency contracting officer shall require the contractor or subcontractor using the apprentice to submit evidence of his indenture and/or apprenticeship registration when the apprentice's name first appears on a submitted payroll.
 - (b) "Commission" means the Prevailing Wage Commission or its administrative delegate, the Tennessee Department of Labor and Workforce Development.
 - (c) "Covered Worker" means all workers employed on State construction projects as defined by T.C.A. §12-4-402(6).
 - (d) "Subcontractor" means one who performs part of the job called for in the prime contract. This term shall include materialmen whose employees engage in the substantial operations at the project site, provided the employees of the materialmen devote as much as 20 percent of their work time on the construction premises.

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- (e) "Contract" means any contract within the scope of the Act (Tennessee Code Annotated § 12-4-401 et seq.), and which is entered into for the erection, remodeling, alteration, repairing, demolition, or making any additions to any building or buildings or for the purpose of building, rebuilding, locating or relocating or repairing any streets, highways, or bridges, or any type of building and construction work wherein any state funds may be appropriated or expended for such building or construction.

Authority: T.C.A. §12-4-415.

Rule 0800-3-2-.02 Classification of Covered Workers is amended by deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

0800-3-2-.02 CLASSIFICATION OF COVERED WORKERS.

- (1) All contractors and subcontractors must classify covered workers in the contract and payroll records in conformity with the schedule of classifications issued by the Commission.
- (a) The Commission hereby issues the following classifications of crafts of workers to be used for workers employed by building contractors and subcontractors. Pursuant to T.C.A. §12-4-405(3)(A), each such craft shall only be assisted by qualified apprentices of the crafts as defined in subparagraph (a) of paragraph (1) of Rule 0800-3-2-.01.
 - 1. "Boilermaker" means one who assembles, analyzes defects in, and repairs boilers, pressure vessels, tanks, and vats in field, following blueprints and using hand tools and portable power tools and equipment; locates and marks reference points for columns or plates on foundation, using a master straightedge, squares, transit, and measuring tape, and applying knowledge of geometry; attaches rigging or signals crane operator to lift parts to a specified position; aligns structures or plate sections to assembly boiler frame, tanks, or vats, using plumb bobs, levels, wedges, dogs, or turnbuckles; hammers, flame cuts, files, or grinds irregular edges of sections or structural parts to facilitate fitting edges together; bolts or arc-welds structures and sections together; positions drums and headers into supports and bolts or welds supports to frame; aligns watertubes and connects and expands ends to drums and headers, using a tube expander; bells, beads with a power hammer, or welds tube ends to ensure leak proof joints; bolts or welds casing sections, uptakes, stacks, baffles, and such fabricated parts as chutes, air heaters, fan stands, feeding tubes, catwalks, ladders, coal hoppers, and safety hatches to frames, using wrenches; installs manholes, handholes, valves, gauges, and feedwater connection in drums to complete assembly of watertube boilers; assists in testing assembled vessels by pumping water or gas under specified pressure into vessels and observing instruments for evidence of leakage; repairs boilers or tanks in field by unbolting or flame cutting defective sections or tubes, straightening plates, using torches or jacks, installing new tubes, fitting and welding new sections and replacing worn lugs or bolts; may rivet and caulk sections of vessels using pneumatic riveting and caulking hammers; may line firebox with refractory brick and asbestos rope and blocks; may fabricate such parts as stacks, uptakes, and chutes to adapt boiler to premises in which it is installed; assembles boilers, tanks, vats and pressure vessels according to blueprint specifications, using power tools and hand tools; reads blueprints to determine location and relationship of parts; connects firetubes to heads or watertubes to drums and headers of boilers, by expanding and beading ends, using a tube expander and beading ends, using a power hammer; drills and taps holes for installation of studs, using a portable drill; tightens bolts to assemble frames, using hand or power wrenches; mounts casings of watertube boilers, or attaches davit heads,

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burners or furnace casings to firetube boilers, using wrenches; bolts or screws accessories, such as manholes, handholes, fans, gauges, and valves to vessels, using hand tools or power wrenches; replaces defective parts, using power wrenches, prying bars or hand tools; may install and repair refractory brick; may thread and install stay bolts, using pipe wrenches and dies; may remove and replace rivets and caulk seams to repair riveted shells and structures, using a pneumatic chisel, riveter, and caulking hammer; and may cut out defective parts, using an acetylene torch.

2. "Bricklayer" means one who performs duties in the following areas:

- (i) "Construction" means one who lays building materials, such as brick, structural tile, concrete block, glass, gypsum, and terra cotta block (except stone) to construct or repair walls, partitions, arches, sewers, and other structures; measures distance from reference points and marks guidelines on working surface to lay out work; spreads soft bed (layer) of mortar that serves as a base and binder for block, using a trowel; applies mortar to end of block and positions block in mortar bed; taps block with a trowel to level, align, and embed in mortar, allowing specified thickness of joint; removes excess mortar from face of block, using a trowel; finishes mortar between brick with pointing tool or trowel; breaks brick to fit spaces too small for whole brick, using the edge of a trowel or brick hammer; determines vertical and horizontal alignment of courses, using a plumb bob, gaugeline (tightly stretched cord), and level; fastens brick or terra cotta veneer to face of structures, with tie wires embedded in mortar between bricks, or in anchor holes in veneer brick; may weld metal parts to structural-steel members; and may apply plaster to walls and ceiling, using a trowel to complete repair work.
- (ii) "Firebrick and Refractory Tile" means one who lays firebrick and refractory tile to build, rebuild, reline, or patch high-temperature or heating equipment, such as boilers, ovens, furnaces, converters, cupolas, ladles, and soaking pits, according to job orders and blueprints; lays out work, using chalklines, plumb bobs, tapes, squares, and levels; calculates angles and courses for building walls, arches, columns, corners and bottoms; removes burned or damaged brick and cleans surface of setting, using a sledgehammer, pry bar, pneumatic chipping gun, scraper and wire brush; cuts brick to size, using a brick hammer or powered abrasive saw; spreads fire-clay mortar over brick with a trowel and lays brick in place; spreads or sprays refractories over exposed bricks to protect bricks against deterioration by heat, using a trowel or spray gun; positions or bends special frame or hanger over casings to lay arches; cuts, notches, or drills openings to provide outlets, pyrometer mountings, brackets and heating elements, using hand tools; patches or replaces firebrick linings of ladles and furnace tap holes; constructs refractory forms for controlling quantity and flow of molten materials from furnace to rolling machines; may replace bolts, brackets, and heating elements, repair coke oven doors, weld cracks or holes in shells, or perform other repairs; and may pack insulation into shells and frames to insulate heating equipment, such as furnaces, boilers and ovens.
- (iii) "Marble Finisher" means one who supplies and mixes construction materials for marble setter; applies grout, and cleans installed marble; moves marble installation materials, tools, machines, and work devices to work areas; mixes mortar, plaster, and grout, as required, following standard formulas and using manual

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or machine mixing methods; moves mixed mortar or plaster to installation area, manually or using a wheelbarrow; selects marble slabs for installation, following numbered sequence or drawings; drills holes and chisels channels in edges of marble slabs to install metal wall anchors, using a power drill and chisel; bends wires to form metal anchors, using pliers; inserts anchors into drilled holes of marble slab, and secures anchors in place with wooden stake and plaster; moves marble slabs to installation site, using a dolly, hoist, or portable crane; fills marble joints and surface imperfections with grout, using a grouting trowel or spatula, and removes excess grout, using a wet sponge; grinds and polishes marble, using abrasives, chemicals, and manual or machine grinding and polishing techniques; cleans installed marble surfaces, work and storage areas, installation tools, machinery, and work aids, using water and cleaning agents; stores marble, installation materials, tools, machinery, and related items; may modify mixing, material moving, grouting, polishing, and cleaning methods and procedures, according to type of installation or materials; may repair and fill chipped, cracked, or broken marble pieces, using a torch, spatula, and heat sensitive adhesive and filler; may secure marble anchors to studding, using pliers, and cover ends of anchors with plaster to secure anchors in place; may assist marble setter to saw and position marble; and may erect scaffolding and related installation structures.

- (iv) “Marble Setter” means one who cuts, tools, and sets marble slabs in floors and walls of buildings and repairs and polishes slabs previously set in buildings; trims, faces and cuts marble to specified size, using power sawing, cutting, and facing equipment and hand tools; drills holes in slabs and attaches brackets; spreads mortar on bottom of slabs and on sides of adjacent slabs; sets block in position, tamps it into place, and anchors bracket attachment with wire; fills joints with grout; removes excess grout from marble with a sponge; cleans and bevels cracks or chips on slabs, using hand tools and power tools; heats cracked or chipped area with a blowtorch and fills defect with composition mastic that matches grain of marble; and polishes marble and other ornamental stone to a high luster, using power tools or by hand.
- (v) “Stonemason” means one who sets stone to build stone structures, such as piers, walls and abutments, or lays walks, curbstones, or special types of masonry, such as alberene (acid-resistant soapstone for vats, tanks, and floors), using a mason's tools; shapes stone preparatory to setting, using a chisel hammer, and other shaping tools; spreads mortar over stone and foundation with a trowel and sets stone in place by hand or with the aid of a crane; aligns stone with plumbline and finishes joints between stone with a pointing trowel; may spread mortar along mortar guides to ensure joints of uniform thickness; may clean surface of finished wall to remove mortar, using muriatic acid and a brush; and may set cut and dressed ornamental and structural stone in buildings.
- (vi) “Terrazzo Finisher” means one who supplies and mixes construction materials for terrazzo worker; applies grout, and finishes surface of installed terrazzo; moves terrazzo installation materials, tools, machines, and work devices to work areas, manually or using a wheelbarrow; measures designated amounts of ingredients for terrazzo or grout, using graduated containers and a scale, following standard formulas and specifications, and loads portable mixer, using a shovel; mixes materials according to experience and requests from terrazzo worker and dumps mixed materials that form base or top surface of terrazzo into prepared installation site, using a wheelbarrow; applies curing agent to installed terrazzo

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to promote even curing, using a brush or sprayer; grinds surface of cured terrazzo, using power grinders to smooth terrazzo and prepare for grouting; spreads grout across terrazzo to fill surface imperfections, using a trowel; fine grinds and polishes surface of terrazzo when grout has set, using power grinders; washes surface of polished terrazzo, using a cleanser and water, and applies sealer, according to manufacturer's specifications, using a brush; installs grinding stone in power grinders, using hand tools; cleans installation site, mixing and storage areas, tools, machines, and equipment, using water and various cleaning devices; stores terrazzo installation materials, machines, tools, and equipment; may modify mixing, grouting, grinding, and cleaning procedures according to type of installation or material used; may assist terrazzo worker to position and secure moisture membrane and wire mesh prior to pouring base materials for terrazzo installation; may spread marble chips or other material over fresh terrazzo surface and press into terrazzo, using a roller; may cut divider and joint strips to size as directed; and may cut grooves in terrazzo stairs, using a power grinder, and fill grooves with nonskid material.

- (vii) "Terrazzo Worker" means one who applies cement, sand, pigment and marble chips to floors, stairways, and cabinet fixtures to attain durable and decorative surfacing according to specifications and drawings; spreads roofing paper on surface of foundation; spreads mixture of sand, cement, and water over surface with a trowel to form a terrazzo base; cuts metal division strips and presses them into terrazzo base so that top edges form desired design or pattern and define level of finished floor surface; spreads mixture of marble chips, cement, pigment, and water over terrazzo base to form a finished surface, using a float and trowel; scatters marble chips over finished surface; pushes roller over surface to embed chips; allows surface to dry, and pushes electric-powered surfacing machine over floor to grind and polish terrazzo surface; grinds curved surfaces and areas inaccessible to surfacing machine, such as stairways and cabinet tops, with a portable hand grinder; and may precast terrazzo blocks in wooden forms.
- (viii) "Tile Finisher" means one who supplies and mixes construction materials for tile setter; applies grout, and cleans installed tile; moves tiles, tile setting tools, and work devices from storage area to installation site manually or using a wheelbarrow; mixes mortar and grout according to standard formulas and requests from tile setter, using a bucket, water hose, spatula, and portable mixer; supplies tile setter with mortar, using a wheelbarrow and shovel; applies grout between joints of installed tile, using a grouting trowel; removes excess grout from tile joints with a wet sponge and scrapes corners and crevices with a trowel; wipes surface of tile after grout has set to remove grout residue and polish tile, using nonabrasive materials; cleans installation site, mixing and storage areas, and installation machines, tools, and equipment, using water and various cleaning tools; stores tile setting materials, machines, tools, and equipment; may apply caulk, sealers, acid steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment; may modify mixing, grouting, grinding, and cleaning procedures according to type of installation or material used; may assist tile setter to position and secure metal lath, wire mesh, or felt paper prior to installation of tile; and may cut marked tiles to size, using a power saw or tile cutter.
- (ix) "Tile Setter" means one who applies tile to walls, floors, ceilings and promenade roof decks, following design specifications; examines blueprints, measures and marks surfaces to be covered, and lays out work; measures and cuts metal lath

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to size for walls and ceilings with tin snips; tacks lath to wall and ceiling surfaces with a staple gun or hammer; spreads plaster base over lath with a trowel and levels plaster to specified thickness, using a screed; spreads concrete on subfloor with a trowel and levels it with a screed; spreads mastic or other adhesive base on a roof deck using a serrated spreader to form the base for promenade tile; cuts and shapes tile with tile cutters and biters; and positions tile and taps it with a trowel handle to affix tile to plaster or adhesive base.

3. "Carpenter" means one who constructs, erects, installs and repairs structures and fixtures of wood, plywood, and wallboard, using a carpenter's hand tools and power tools, and conforming to local building codes; studies blueprints, sketches, or building plans for information pertaining to type of material required, such as lumber or fiberboard, and dimensions of structure or fixture to be fabricated; selects specified type of lumber or other materials; prepares layout, using a rule, framing square, and calipers; marks cutting and assembly lines on materials, using a pencil, chalk and marking gauge; shapes materials to prescribed measurements, using saws, chisels, and planes; assembles cut and shaped materials and fastens them together with nails, dowel pins, or glue; verifies trueness of structure with a plumb bob and carpenter's level; erects framework for structures and lays subflooring; builds stairs and lays out and installs partitions and cabinet work; covers subfloor with building paper to keep out moisture and lays hardwood, parquet, and wood-strip-block floors by nailing floors to subfloor or cementing them to mastic or asphalt base; applies shock-absorbing, sound-deadening, and decorative paneling to ceilings and walls; fits and installs prefabricated window frames, doors, door frames, weather stripping, interior and exterior trim, and finish hardware, such as locks, letterdrops, and kick plates; assembles scaffolding and seals off work area, using plastic sheeting and duct tape; positions a mobile decontamination unit or portable showers at entrance of work area; builds a connecting walkway between a mobile unit or portable showers and work area, using hand tools, lumber, nails, plastic sheeting, and duct tape; constructs forms and chutes for pouring concrete; erects scaffolding and ladders for assembling structures above ground level; may weld metal parts to structural-steel members; when specializing in particular phase of carpentry, is designated according to specialty as combination window installer (construction); when specializing in finish carpentry, such as installing interior and exterior trim, building stairs, and laying hardwood floors, is designated finish carpenter (construction); when erecting frame buildings and performing general carpentry work in residential construction, is designated house carpenter (construction); may remove and replace sections of structures prior to and after installation of insulating materials and be designated building-insulating carpenter (construction; retail trade); may perform carpentry work in construction of walk-in freezers and environmental test chambers and be designated carpenter, refrigerator (service industry machinery); and may be designated: door hanger (construction), finished-hardware erector (construction), garage-door hanger (construction), hardwood-floor installer (construction), jalousie installer (construction), stair builder (construction), trim setter (construction), weather stripper (construction), wood strip-block installer (construction), pile driver, or dock builder. A carpenter may work on resilient floors, computer floors, pedestal floors, carpet installations, siding, acoustical ceilings, metal and wood framing, furniture installation, lathing, scaffold erecting, metal partitions, the disassembly of forms for concrete, counter tops of all materials, plastic laminates, solid surface materials, and toilet partitions.
4. "Cement Finisher, Plasterer" means one who smoothes and finishes surfaces of poured concrete floors, walls, sidewalks, or curbs to specified textures, using hand tools or power tools, including floats, trowels, and screeds; signals concrete deliverer to position

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truck to facilitate pouring concrete; moves discharge chute of truck to direct concrete into forms; spreads concrete into inaccessible sections of forms, using a rake or shovel; levels concrete to a specified depth and workable consistency, using a hand held screed and floats to bring the water to the surface to produce a soft topping; smoothes and shapes surfaces of freshly poured concrete, using a straightedge and float or power screed; finishes concrete surfaces, using a power trowel, or wets and rubs concrete with abrasive stone to impart finish; removes rough or defective spots from concrete surfaces, using a power grinder or chisel and hammer, and patches holes with fresh concrete or epoxy compound; molds expansion joints and edges, using edging tools, jointers, and straightedge; may sprinkle colored stone chips, powdered steel, or coloring powder on concrete to produce prescribed finish; may produce rough concrete surface, using a broom; may mix cement, using a hoe or concrete-mixing machine; may direct sub-grade work, mixing of concrete, and setting of forms; may specialize in finishing steps and stairways and be designated a step finisher (construction); and may break up and repair old concrete surfaces, using pneumatic tools, and be designated a cement mason, maintenance (any industry).

5. "Class A Operator" means one who operates a wide variety of heavy equipment such as but not limited to: backhoes, drag lines, cranes, winches with booms, motor patrols, trenching machines (18" and over), pile drivers, tug boats, mechanics (heavy), central mixing plants, locomotives, straddle carriers, earth freezing equipment, 3-drum hoists, side booms, dredges, mucking machines, cableways, central compressor plants, derrick boats, concrete pumps, well point systems, self-propelled sweepers, bulldozers, forklifts, and front end loaders; adjusts hand-wheels, depresses pedals and moves levers to drive equipment and control attachments such as blades, buckets, scrapers and swing booms; turns valves to control air and water output of compressors and pumps; and repairs, maintains and services equipment as needed. Various equipment operating engineers may also operate steel and stone handling equipment in connection with erections, machine-handling machinery, cable spinning machines, conveyor loaders, keystones, all types of shovels, derricks, trench shovels, pippin type backhoes, hoists, pavers, milling machines, gradalls, tandem scrapers, drills (self-contained drillmaster type), batch plants with mixer, scrapers and tournapulls, rollers, spreaders, tractors, conveyors, pressure boilers, well drillers, ditch witch type trenchers, concrete breaking machines, fine grade machines, seamen pulverizing mixers, form line graders, road finishing machines, power booms, seed spreaders, grease trucks, compressors, pumps and machines similar to above. Included in this definition are tiremen on power equipment, asphalt plant engineers, maintenance engineers (power boat), firemen, oilers and deck hands (personnel boats), and grease truck helpers.
6. "Class B Operator" means one who operates a wide variety of equipment such as: trenching machines (less than 18"), tandem rollers, pavers, mobile mixers (rubber tired mobile, mixed on job), back fillers, blade graders, dinkeys (over 10 tons), elevating graders, winches (operated from trucks or tractors without booms and powered other than by the trucks), bituminous distributors, 1 and 2 drum hoists, grout pumps, motor boats, self-propelled earth compactors, finishing machines, and mixers; adjusts hand-wheels, depresses pedals and moves levers to drive equipment and control attachments such as blades, buckets, scrapers and swing booms; turns valves to control air and water output of compressors and pumps; and repairs, maintains and services equipment as needed. Included in this definition are switchmen, brakemen, and firemen.

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7. "Class C Operator" means one who operates a wide variety of equipment such as: air compressors, earth drills, scales, tractors (40 horse power and less), pumps (larger than 4"), and dinkeys (less than 10 tons); adjusts hand-wheels, depresses pedals and moves levers to drive equipment and control attachments; turns valves to control air and water output of compressors and pumps; and repairs, maintains and services equipment as needed. Included in this definition are motor crane drivers and oilers.
8. "Electrician" means one who plans layout, installs, and repairs wiring, electrical fixtures, apparatus, and control equipment; plans new or modified installations to minimize waste of materials, provide access for future maintenance, and avoid unsightly, hazardous, and unreliable wiring, consistent with specifications and local electrical codes; prepares sketches showing location of wiring and equipment, or follows diagrams or blueprints, ensuring that concealed wiring is installed before completion of future walls, ceilings, and flooring; measures, cuts, bends, threads, assembles, and installs electrical conduit, using tools, such as hacksaw, pipe threader, and conduit bender; pulls wiring through conduit; splices wire by stripping insulation from terminal leads, using a knife or pliers, twisting or soldering wires together, and applying tape or terminal caps; connects wiring to lighting fixtures and power equipment, using hand tools; installs control and distribution apparatus, such as switches, relays, and circuit-breaker panels, fastening in place with screws or bolts, using hand tools and power tools; connects power cables to equipment, such as electric range or motor, and installs grounding leads; lays polyvinyl chloride (PVC) pipe for main feed electric line; and tests continuity of circuit to ensure electrical compatibility and safety of components, using testing instruments, such as ohmmeter, battery and buzzer, and oscilloscope.
9. "Elevator Constructor" means one who assembles and installs electric and hydraulic freight and passenger elevators, escalators, and dumbwaiters, determining layout and electrical connections from blueprints; studies blueprints and lays out location of framework, counterbalance rails, motor pump, cylinder, and plunger foundations; drills holes in concrete or structural-steel members with portable electric drill; secures anchor bolts or welds brackets to support rails and framework, and verifies alignment with a plumb bob and level; cuts prefabricated sections of framework, rails, and other elevator components to specified dimensions, using an acetylene torch, power saw, and disc grinder; installs cables, counterweights, pumps, motor foundations, escalator drives, guide rails, elevator cars, and control panels, using hand tools; connects electrical wiring to control panels and electric motors; installs safety and control devices; positions electric motor and equipment on top of elevator shaft, using hoists and cable slings; and may be designated according to type of equipment installed as elevator constructor, electric (construction), elevator constructor, hydraulic (construction), or escalator constructor (construction).
10. "Glazier" means one who installs glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops; marks outline or pattern on glass, and cuts glass, using a glasscutter; breaks off excess glass by hand or with notched tool; fastens glass panes into wood sash with glazier's points, and spreads and smoothes putty around edge of panes with knife to seal joints; installs mirrors or structural glass on building fronts, walls, ceilings, or tables, using mastic, screws, or decorative molding; bolts metal hinges, handles, locks, and other hardware to prefabricated glass doors; sets glass doors into frames and fits hinges; may install metal window and door frames into which glass panels are to be fitted; may press plastic adhesive film to glass or spray glass with tinting solution to prevent light glare; may install stained glass windows; may assemble and install metal-framed glass

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enclosures for showers and be designated shower-enclosure installer (construction); and may be designated according to type of glass installed as glazier, structural glass (construction), or plate-glass installer (construction).

11. "Insulation Worker for Mechanical Trades/Asbestos Worker" means one who applies insulating material* to exposed surfaces of structures, such as air ducts, hot and cold pipes, storage tanks, and cold storage rooms; reads blueprints and selects required insulation material (in sheet, tubular, or roll form) such as fiberglass, foam rubber, styrofoam, cork, or urethane, based on material's heat retaining or excluding characteristics; brushes adhesives on or attaches metal adhesive-backed pins to flat surfaces as necessary to facilitate application of insulation material; measures and cuts insulation material to specified size and shape for covering flat or round surfaces, using a tape measure, knife, or scissors; fits, wraps, or attaches required insulation material around or to structure, following blueprint specifications; covers or seals insulation with preformed plastic covers, canvas strips, sealant, or tape to secure insulation to structure, according to type of insulation used and structure covered, using a staple gun, trowel, paintbrush, or caulking gun; removes asbestos**from ceilings, walls, beams, boilers, and other structures, following hazardous waste handling guidelines; positions portable air evacuation and filtration system inside work area; sprays chemical solution over asbestos covered surfaces, using a tank with an attached hose and nozzle, to soften asbestos; cuts and scrapes asbestos from surfaces, using a knife and scraper; shovels asbestos into plastic disposal bags and seals bags, using duct tape; cleans work area of loose asbestos, using a vacuum, broom, and dust pan; places asbestos in disposal bags and seals bags, using duct tape; dismantles scaffolding and temporary walkway, using hand tools, and places plastic sheeting and disposal bags into transport bags; and seals bags, using duct tape, and loads bags into truck. (*Note: Installation of insulation is also found in other classifications relating to other trades. **Note: Whenever asbestos is removed on any State construction project, all contractors and subcontractors must comply with the Tennessee Occupational Safety and Health Regulations in 29 Code of Federal Regulations 1926.1101.)
12. "Ironworker" means one who performs any combination of the following duties to raise, place, and unite girders, columns, and other structural-steel members to form completed structures or structure frameworks, working as a member of a crew; sets up hoisting equipment for raising and placing structural-steel members; fastens steel members to cable of hoist, using a chain, cable, or rope; signals worker operating hoisting equipment to lift and place steel members; guides steel members using a tab line (rope) or rides on steel members in order to guide them into position; pulls, pushes, or pries steel members into approximate positions while steel members are supported by hoisting device; forces steel members into final positions, using turn-buckles, crowbars, jacks, and hand tools; aligns rivet holes in steel members with corresponding holes in previously placed steel members by driving drift pins or handle of wrench through holes; verifies vertical and horizontal alignment of steel members, using a plumb bob and level; bolts aligned steel members to keep them in position until they can be permanently riveted, bolted, or welded in place; catches hot rivets tossed by rivet heater (heat treating) in bucket and inserts rivets in holes, using tongs; bucks (holds) rivets while pneumatic riveter uses air-hammer to form heads on rivets; cuts and welds steel members to make alterations, using oxyacetylene welding equipment; may specialize in erecting or repairing specific types of structures and be designated bridge-maintenance worker (construction), chimney builder, reinforced concrete (construction), metal building (construction), or structural-steel equipment erector (construction); positions and secures steel bars in concrete forms to reinforce concrete; determines number, sizes, shapes, and locations of reinforcing rods from

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blueprints, sketches, or oral instructions; selects and places rods in forms, spacing and fastening them together, using wire and pliers; cuts bars to required lengths, using a hacksaw, bar cutters, or acetylene torch; may bend steel rods with hand tools or rod bending machine; may reinforce concrete with wire mesh; may weld reinforcing bars together, using arc-welding equipment; welds deck pans on a bridge, reinforcing supports for the concrete structure; installs wire, cable, steel and other materials used for the purpose of pre-stressing and post-stressing concrete girders, beams, columns, etc.; loads, unloads, hoists, handles, signals, places and erects all pre-stressed and post-stressed pre-cast material including grouting of post tension cables, glass fiber reinforced concrete panels, including the securing by bolting and/or welding and the installation of steeltex and wire mesh of any type when used for reinforced concrete construction; erects, trims, and fits together by means of bolts and clamps, iron grills, grating, and special stairways; erects ornamental enclosures and other ironwork not included in structural ironwork; fastens ironwork to walls of buildings by means of bolts, brackets, and anchors; fastens newel posts, balusters, and other parts of stairways by fastening to supports or embedding them in sockets; and forges, welds, drills, and cuts as needed.

13. "Laborer (Class A)" means one who performs any combination of the following duties on construction projects, usually working in a utility capacity, by transferring from one task to another where demands require a worker with varied experience and ability to work without close supervision. Laborers may not assist mechanics in the performance of mechanics' work using tools peculiar to an established trade. Their work is to be confined to the following tasks and operation of various power tools such as but not limited to: jackhammers, air tampers, vibrators, cat-crawlers, chipping hammers, motorized wheel-barrows, concrete saws, motorized posthole diggers, chain saws, air tools, power-driven tools, and mortar mixers. Laborers may have duties as mason tenders, asphalt rakers, form setters, strippers, and tool-room attendants. Included in this definition is one who performs a variety of tasks involving dextrous use of hands and tools such as demolishing buildings, sawing rough lumber, dismantling forms, removing projections from concrete, and mounting pipe hangers (work that is usually performed with other workers); uses a cutting torch for demolition work on steel or other metal structures; on utility projects, lays tile, concrete, or corrugated metal pipe, receiving pipe lowered from top of trench, inserting spigot end of pipe into bell end of last laid pipe, adjusting pipe to line and grade and sealing joints with cement or other sealing compound; assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixing mortar used in the patching of concrete, and performing other tasks as may be directed by cement mason or plasterer; mixes mortar for working; sets up scaffolding as directed by foreman; assists brickmasons, stonemasons, and blockmasons by preparing mortar mix, either by hand or machine, delivering material to masons on scaffolds, and operating small material moving equipment such as power buggies, hoists, mortar mix pumps and other similar equipment; erects and dismantles bricklayer scaffolds according to directions of mason; mixes plaster to be used in a machine designed to apply plaster to surfaces by means of a hose; handles and maintains hose, placing and moving machine; may service and maintain machine, as necessary; and may also be in charge of cleaning and caring for tools and equipment used in the preparation and application of plaster.
14. "Laborer (Class B) Unskilled" means one who may not assist mechanics in the performance of mechanics' work using tools peculiar to an established trade. Their work is to be confined to the following manual tasks: digging and filling holes and trenches; loading, unloading and stockpiling materials; cleaning and sweeping; driving stakes;

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stripping forms; ripping out material which is to be discarded; ground cleanup of roof removal work; roof removal work for demolitions; clearing and grubbing; flagging; operating chippers and/or stump grinders; cleaning, screening and feeding sand to hopper or pot of sandblasting machines; cleaning and preparing surfaces by the use of sandblasting equipment; assisting in setting up drill, assorting drill steels, and inserting drill steel into drill chuck (as wagon, air track, drill and diamond drillers' tender - outside); lubricating drills; cleaning and washing windows; performing landscaping duties including site development, soil preparation, fertilizing, the building of garden accessories, preparation for the installation of garden sprinkler systems, and operating small walking type farm equipment. Their duties shall not include electrical work, fencing, concrete retaining walls, or other work which is generally performed by skilled craftsmen.

15. "Millwright" means one who installs machinery and equipment according to layout plans, blueprints, and other drawings in an industrial establishment, using hoists, lift trucks, hand tools, and power tools; reads blueprints and schematic drawings to determine work procedures; dismantles machines, using hammers, wrenches, crowbars and other hand tools; moves machinery and equipment, using hoists, dollies, rollers, and trucks; assembles and installs equipment, such as shafting, conveyors, and tram rails, using hand tools and power tools; constructs foundations for machines, using hand tools and building materials, such as wood, cement, and steel; aligns machines and equipment, using hoists, jacks, hand tools, squares, rules, micrometers, and plumb bobs; assembles machines, and bolts, welds, rivets, or otherwise fastens them to foundations or other structures, using hand tools and power tools; may operate engine lathe to grind, file, and turn machine parts to dimensional specifications; may repair and lubricate machines and equipment; may install robot and modify its program, using a teach pendant; and may perform installation and maintenance work as part of team of skilled trades workers.
16. "Painter/Plaster" means one who applies coats of paint, varnish, stain, enamel, or lacquer to decorate and protect interior or exterior surfaces, trimmings, and fixtures of buildings and other structures; reads work orders or receives instructions from supervisor regarding painting; smooths surfaces, using sandpaper, brushes, or steel wool, and removes old paint from surfaces (to include lead based paint), using paint remover, scraper, wire brush, or blowtorch to prepare surfaces for painting; fills nail holes, cracks, and joints with caulk, putty, plaster, or other filler, using a caulking gun and putty knife; selects premixed paints, or mixes required portions of pigment, oil, and thinning and drying substances to prepare paint that matches specified colors; removes fixtures, such as pictures and electric switchcovers from walls prior to painting, using a screwdriver; spreads dropcloths over floors and room furnishings, and covers surfaces, such as baseboards, door frames, and windows with masking tape and paper to protect surfaces during painting; paints surfaces, using brushes, spray guns, or paint rollers; simulates wood grain, marble, brick, or tile effects; applies paint with cloth, brush, sponge, or fingers to create special effects; erects scaffolding or sets up ladders to perform tasks above ground level; may be designated according to type of work performed as: painter, interior finish (construction); painter, maintenance (any industry); or according to type of material used as calciminer (construction); or varnisher (construction); may also hang wallpaper and fabrics; may wash surfaces prior to painting with mildew remover, using a brush; may apply drywall finish to work which will include, but not be limited to the preparation or leveling of any surface or substrate which is to receive a coating, finish and/or wall covering for all levels of finishing and/or spackling of all surfaces, including gypsum wallboard taping and

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finishing, fire taping and all firestopping systems, glaze coatings, skim coating or any other finishing system, spotting of nails, finishing of corner beads/flex beads, patching and sanding that is within the system of preparing surfaces for finishes, and all stucco and dryvit systems; applies coats of plaster to interior walls, ceilings, and partitions of buildings, to produce finished surface, according to blueprints, architect's drawings, or oral instructions, using hand tools and portable power tools; directs workers to mix plaster to desired consistency and to erect scaffolds; spreads plaster over lath or masonry base, using a trowel, and smooths plaster with a darby and float to attain uniform thickness; sprays fireproof insulation onto steel beams; applies scratch, brown, or finish coats of plaster to wood, metal, or board lath successively; roughens undercoat with scratcher (wire or metal scraper) to provide bond for succeeding coats of plaster; creates decorative textures in finish coat by marking surface of coat with a brush and trowel or by spattering surface with pebbles; may install lathing; may mix mortar; may install guide wires on exterior surface of buildings to indicate thickness of plaster to be applied; may install precast ornamental plaster pieces by applying mortar to back of pieces and pressing pieces into place on wall or ceiling; molds and installs ornamental plaster panels and trim, and runs (casts) ornamental plaster cornices and moldings by either of the following methods: spreads freshly mixed plaster on table or in forms with a trowel when molding and installing ornamental trim; shapes plaster by hand, using a template and cuts trim to size after plaster has hardened; applies coat of plaster to wall and presses trim into position; nails wooden strips to wall and ceiling to serve as guide for template when casting (running) cornices or moldings; applies plaster to wall or ceiling, using a trowel, or pushes template over plaster striking off excess plaster until desired shape and smoothness of molding is obtained; applies weatherproof, decorative covering of portland cement or gypsum plaster to outside building surfaces, using hand tools; decorates final or finish coat by marking coat with sand, or with a brush or trowel, or by spattering with small stones; may nail wire mesh, lath, or similar material to outside surfaces to serve as binding device to hold stucco in place; may apply stucco, using a spray gun; and may install guide wires on surface of buildings to indicate thickness of stucco to be applied.

17. "Plumber/Pipe Fitter/Steam Fitter/Sprinkler Fitter" means one who lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints; selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications; inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness; plans installation or repair to avoid obstruction and to avoid interfering with activities of other workers; cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch and pipe cutting machine; threads pipe, using a pipe threading machine; bends pipe, using pipe bending tools and pipe bending machine; assembles and installs a variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic; connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints and hand tools; secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools; installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools; installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints; increases pressure in pipe system and observes

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connected pressure gauge to test system for leaks; may weld pipe supports to structural-steel members; may operate machinery to verify repair; may modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using a teach pendant, control panel, or keyboard and display screen of robot controller and programmable controller; may be designated steam fitter when installing piping systems that must withstand high pressure; assembles, installs, and repairs pipes, fittings, and fixtures of heating, water, and drainage systems, according to specifications and plumbing codes; studies building plans and working drawings to determine work aids required and sequence of installations; inspects structure to ascertain obstructions to be avoided to prevent weakening of structure resulting from installation of pipe; locates and marks position of pipes and pipe connections and passage holes for pipes in walls and floors, using a ruler, spirit level, and plumb bob; cuts openings in walls and floors to accommodate pipe and pipe fittings, using hand tools and power tools; cuts and threads pipe, using pipe cutters, cutting torch, and pipe-threading machine; bends pipe to required angle by use of pipe-bending machine or by placing pipe over block and bending it by hand; assembles and installs valves, pipe fittings, and pipes composed of metals, such as iron, steel, brass, lead, and nonmetals, such as glass, vitrified clay, and plastic, using hand tools and power tools; joins pipes by use of screws, bolts, fittings, solder, plastic solvent, and caulks joints; fills pipe system with water or air and reads pressure gauges to determine whether system is leaking; installs and repairs plumbing fixtures, such as sinks, commodes, bathtubs, water heaters, hot water tanks, garbage disposal units, dishwashers, and water softeners; repairs and maintains plumbing by replacing washers in leaky faucets, mending burst pipes, and opening clogged drains; may weld holding fixtures to structural-steel members; tests, adjusts and balances heating and cooling pipe systems in commercial and industrial buildings, using specialized tools and equipment to attain performance standards specified in system design; adjusts flow control valves in piping to balance system, using hand tools such as pliers, screwdrivers, and wrenches; works with balancing personnel to perform tests to see if the heating and cooling systems are operating to specifications and to detect malfunctions in piping system component parts; as a sprinkler fitter, installs and maintains all fire protection and fire control systems including the unloading, handling by hand power equipment and installation of all piping or tubing, appurtenances and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, also all tanks and pumps connected thereto, also included shall be carbon dioxide (CO₂) and cardox systems, dry chemical systems, foam systems, halon and all other fire protection systems, the locating of and cutting or coring of all holes for piping and the setting of all sleeves and inserts required for the installation of the work.

18. "Roofer" means one who covers roofs with roofing materials other than sheet metal, such as composition shingles or sheets, wood shingles, or asphalt and gravel, to waterproof roofs; cuts roofing paper to size, using a knife, and nails or staples it to roof in overlapping strips to form base for roofing materials; aligns roofing material with edge of roof, and overlaps successive layers, gauging distance of overlap with chalkline, gauge on shingling hatchet, or by lines on shingles; fastens composition shingles or sheets to roof with asphalt, cement, or nails; punches holes in slate, tile, terra cotta, or wooden shingles, using a punch and hammer; cuts strips of flashing and fits them into angles formed by walls, vents, and intersecting roof surfaces; when applying asphalt or tar and gravel to roof, mops or pours hot asphalt or tar onto roof base; applies alternate layers of hot asphalt or tar and roofing paper until roof covering

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is as specified; applies gravel or pebbles over top layer, using a rake or stiff-bristled broom; may construct and attach prefabricated roof sections to rafters; may attach shingles to exterior walls and apply roofing paper and tar to shower pans, decks, and promenades to waterproof surfaces; installs insulation in connection with roofer's work; sprays roofs, sidings, and walls with urethane or polyurethane foam to bind, seal, insulate, or soundproof sections of structures; flips switches to start generator, air compressor, and heaters; turns nozzle on spray gun to obtain specified consistency of mixture; directs foam onto surfaces, and determines thickness of foam, using a probe; and connects hose of nitrogen tank to spray compound supply tank when spraying is completed, and turns valves to inject nitrogen into supply tank to prevent crystallization of compounds in tank.

19. "Sheet Metal Worker" means one who plans, lays out, fabricates, assembles, installs, and repairs sheet metal parts, equipment, and products, utilizing knowledge of working characteristics of metallic and nonmetallic materials, machining, and layout techniques using hand tools, power tools, machines, and equipment; reads and interprets blueprints, sketches, or product specifications to determine sequence and methods of fabricating, assembling, and installing sheet metal products; selects gauge and type of sheet metal, such as galvanized iron, copper, steel, aluminum, or nonmetallic materials such as plastics or fiberglass, according to product specifications; lays out and marks dimensions and reference lines on material, using scribes, dividers, squares, and rulers, applying knowledge of shop mathematics and layout techniques to develop and trace patterns of products or parts or using templates; sets up and operates fabricating machines, such as shears, brakes, presses, forming rolls, and routers, to cut, bend, block and form, or straighten materials; shapes metal material over anvil, block, or other form, using hand tools; trims, files, grinds, deburrs, buffs, and smooths surfaces, using hand tools and portable power tools; welds, solders, bolts, rivets, screws, clips, caulks, or bonds component parts to assemble products, using hand tools, power tools, and equipment; installs assemblies in supportive framework according to blueprints, using hand tools, power tools, and lifting and handling devices; inspects assemblies and installation for conformance to specifications, using measuring instruments, such as calipers, scales, dial indicators, gauges, and micrometers; repairs and maintains sheet metal products; may operate computer-aided-drafting (CAD) equipment to develop scale drawings of product or system; may operate laser-beam cutter or plasma arc cutter to cut patterns from sheet metal; installs sheet metal duct work to facilitate the movement of air; and frequently specializes in such areas as ventilation and air-conditioning, restaurant equipment, and architectural sheet metal work.
20. "Truck Driver (3 or More Axles)" means one who operates trucks with 3 or more axles, dump trucks over 6 yards, dumpsters, semi-trailers, tandems escort and pilot vehicles, flat body material trucks, form trucks, greasers and steamers, rubber tired towing and pushing vehicles, A-frames, agitators or mixers, asphalt distributors, low-boys, batch trucks, euclid type or similar off-highway equipment, off-highway tandem back-dumps, specialized earth moving equipment, twin engine equipment, double-hitched equipment, and equipment similar to above.
21. "Truck Driver (2 Axles, Over 1 Ton)" means one who operates trucks with 2 axles over 1 ton, and 5 yard dump trucks.
22. "Truck Driver (2 Axles, 1 Ton and Less)" means one who operates small trucks such as panel trucks and pickups.

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- (b) The Commission hereby issues the following classifications of crafts of workers and helpers to be used for workers employed by highway contractors and subcontractors.
1. "Bricklayer" means one who lays out work from plans; sets up templates and guide lines; lays bricks, concrete blocks, tiles or other materials in the construction of manholes, catch basins, drop inlets, sidewalks, retaining walls, and other incidental structures; and may perform other related duties.
 2. "Carpenter" means one who lays out work from plans or sketches; builds wooden structures, such as concrete forms, falsework, pouring chutes, scaffolds, etc.; builds in place to line and grade, or prefabricates in units to be erected later; builds forms for bridges, drainage structures, walls, etc.; and may perform other related duties.
 3. "Class A Operator" means one who operates a backhoe/hydraulic excavator ($\frac{3}{4}$ yard and over), crane, end loader (3 yards and over), motor patrol (rough), tractor (crawler/utility), scraper, shovel, or trenching machine; and is further defined as follows:
 - (i) "Backhoe Operator" means one who operates boom-type equipment to hoist and move materials, raise and lower heavy weights, and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work as excavations and may be used for other miscellaneous tasks for which crane or stick-type equipment is required.)
 - (ii) "Crane Operator" means one who operates boom-type equipment to hoist and move materials, raise and lower heavy weights and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work as pouring concrete and setting steel. This work is subjected to strict inspection and must conform closely to specifications. The equipment may also be used for other miscellaneous tasks for which crane or stick-type equipment is required which may include hoist operations and pile driving operations.)
 - (iii) "End Loader Operator" means one who operates a rubber tired or crawler-type tractor with an attached bucket on the front end; moves levers to raise and lower to dump contents of bucket; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The machine is used to load materials from stockpiles, excavations, charging batch plants, and loading trucks.)
 - (iv) "Motor Crane Driver" means one who drives a heavy or medium-duty gasoline or diesel truck upon which is mounted a crane for picking up various objects; positions and levels truck at object to be lifted, fastens cables, operates levers or controls in lifting of objects in accordance with signals from designated worker on ground; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (v) "Motor Patrol Operator (Finish)" means one who rides in a control cab of a motor grader to move levers and hand-wheels to guide the machine and to regulate the scraper blade; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

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(Note: The blade is mounted on a carrying and turning circle at the front of the machine. The equipment is used to level dirt to a fine grade and to lay asphalt and flexible base materials. This work is subjected to strict inspection and must conform closely to specifications.)

4. "Class B Operator" means one who operates a backhoe/hydraulic excavator (less than $\frac{3}{4}$ yard), bulldozer or push dozer, end loader (less than 3 yards), motor patrol (rough), tractor (crawler/utility), scraper, shovel, or trenching machine; and is further defined as follows:
 - (i) "Bulldozer or Push Dozer Operator" means one who operates a large tractor with a concave steel blade or push block mounted in front of the chassis; regulates heights of blades or push blocks from the ground; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used to level, distribute and push earth. The work is subjected to strict inspection and must conform closely to specifications. The equipment may also be used as a pusher to load earth-carrying equipment. At times a ripper attachment is used for ripping the earth prior to loading the scraper.)
 - (ii) "Motor Patrol Operator (Rough)" means one who rides in a control cab of a motor grader to move levers and hand-wheels to guide the machine and to regulate the scraper blade; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The blade is mounted on a carrying and turning circle at the front of the machine. The equipment is used to level dirt to a rough grade and to lay asphalt and flexible base materials.)
 - (iii) "Scraper Operator" means one who operates a self-propelled rubber tired or tractor drawn unit known as a scraper, pan, etc. to excavate, transport, and deposit materials moved in normal grading operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (iv) "Shovel Operator (Dragline)" means one who operates boom-type equipment to hoist and move materials, raise and lower heavy weights, and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work in excavations to load haulage equipment with material. Equipment may be used for other miscellaneous tasks for which crane or stick-type equipment is required. It may include hoist operations and pile driving operations.)
 - (v) "Tractor Operator (Crawler or Utility)" means one who operates a gasoline or diesel powered crawler tread or rubber tired tractor to haul heavier implements such as large root plows, heavy sheepfoot rollers, large pneumatic rollers, water tanks, trailers, etc. used in heavy ground clearing operations; uses miscellaneous attachments such as a post-hole digger; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

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- (vi) "Trenching Machine Operator" means one who moves levers to operate a power-driven machine that digs trenches for sewers, water, drainage, oil, or gas pipelines; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The trenching machine is mounted on crawler treads or rubber tires with the digging equipment usually consisting of an endless chain or wheel of edged buckets that excavate and deposit the material on a conveyor belt that in turn discharges the material at the side of the trench.)
5. "Class C Operator" means one who operates an asphalt paver, concrete finishing machine, concrete paver, scale, spreader (self-propelled), concrete grinder, asphalt milling machine, or boring machine (horizontal); and is further defined as follows:
- (i) "Asphalt Milling Machine Operator" means one who uses a specialized machine to mill asphalt for use in resurfacing highways, etc.; and may perform other related duties.
 - (ii) "Asphalt Paver Machine Operator" means one who manipulates hand or foot levers to control movements of a paving machine that spreads and levels asphalted concrete on the sub-grade of a highway; turns hand-wheels to raise or lower screeds, and regulates width of screeds; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (iii) "Concrete Finishing Machine Operator" means one who operates a self-propelled machine which travels on concrete paving forms; levels fresh concrete to an approximate grade and contour by pushing and pulling two (2) screeds over the surface; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (iv) "Concrete Grinder Operator" means one who uses a self-propelled machine to grind out concrete surfaces; and may perform other related duties.
 - (v) "Concrete Paver Operator" means one who operates a paving machine that travels on forms or in slipform operation; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (vi) "Scale Operator" means one who weighs materials in trucks prior to deliveries; records net and gross weights, truck numbers, and kinds of materials; may weigh empty trucks on the truck scale in order to compute net weights; may issue weight tickets on certain types of scale equipment since the job is clerical in nature; and may perform other related duties.
 - (vii) "Spreader Operator (Self-Propelled)" means one who drives a self-propelled vehicle, consisting primarily of a hopper mounted on pneumatic-tired wheels, used to spread crushed aggregate on bituminous roadway material; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

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6. "Class D Operator" means one who operates a bobcat, central mixing plant, concrete pump, concrete saw, curb machine (automatic or manual), dozer or loader (stockpile), drill (piling), mulcher or seeder, rock drill (truck mounted), roller (asphalt), roller (compaction self-propelled), soil stabilization machine, tractor (boom and hoist), bituminous distributor machine, pump, track drill, or striping machine; and is further defined as follows:
- (i) "Bituminous Distributor Machine Operator" means one who operates a machine that spreads and levels hot-mix bituminous paving material on the sub-grade of highways and streets; and may perform other related duties.
 - (ii) "Bobcat Operator" means one who uses small tractor-type equipment for excavations, backfill trenching or smoothing with a blade-lift, scoop or bucket; and may perform other related duties.
 - (iii) "Boring Machine Operator (Horizontal)" means one who sets up and operates a drilling mechanism that drills holes horizontally; levels a machine by placing timbers under wheels or tracks; inserts and fastens drill steel in chuck; adjusts angles of drill towers and bolts into position; controls drilling and speed of drill by moving levels; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (iv) "Central Mix Plant Operator (Asphalt or Concrete)" means one who operates a stationary or portable batching plant in mixing concrete materials or asphaltic materials and aggregates to produce asphaltic or concrete paving materials; adjusts controls for required mixture of the materials; operates controls that admit materials separately from storage hoppers or mixing bins; observes indicators that show when proper amounts of materials have been made; discharges materials from bins into trucks or other carriers or mixers; and may perform other related duties.
 - (v) "Concrete Saw Operator" means one who operates a water-cooled power saw with either a diamond or an abrasive blade to saw expansion and contraction joints in concrete paving or asphaltic pavements; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (vi) "Curb Machine Operator (Automatic)" means one who operates a self-propelled machine which finishes fresh concrete to a contour by pushing and pulling two (2) screeds over the surface; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (vii) "Curb Machine Operator (Manual)" means one who operates a manual curb machine which by auger action forces compacted fresh concrete or asphalt through a tube to form an extruded curb along a contour to a grade; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (viii) "Distributor Operator (Bituminous)" means one who drives a truck equipped with a tank and controls for regulating distribution of bituminous materials for highway surfacing; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

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- (ix) "Ditch Paver Machine Operator" means one who operates a self-propelled machine in pouring concrete ditch paving; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (x) "Dozer or Loader (Stock Pile Only)" means one who operates a rubber tired or crawler-type tractor with an attached bucket on the front end; moves levers to raise and lower to dump contents of bucket; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The machine is used to load materials from stockpiles, charging batch plants, and loading trucks.)
- (xi) "Drill Operator (Piling)" means one who sets up and operates a drill mechanism for driving piling; levels and positions drill; adjusts angle of drill; controls drilling and speed of drill by moving controls; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xii) "Mulcher or Seeder Operator" means one who operates a mulching machine for the placement of mulched materials; operates a gun for distribution; feeds machine as required; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xiii) "Pile Driver Operator" means one who operates a machine either crane or skid mounted with leads and hammer or jets for driving piling; assists other workers in setting up pile drive leads; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xiv) "Pump Operator" means one who operates a concrete, fuel, or other fluid pump; sets up pump and lays pipes or flexible lines; operates power unit of pump; takes pipelines apart to clean and store; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xv) "Roller Operator (Asphalt)" means one who operates a self-propelled machine with either two or three steel flat wheels, which is used to compact plant mix asphalt pavement; rides on the platform of a machine and moves levers, pedals, or throttles to control and guide the machine; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xvi) "Roller Operator (Other than Asphalt)" means one who operates a crawler tread tractor to pull a grid, sheepfoot, or extra-heavy pneumatic roller, which is used to compact earth fills, flexible bases, etc.; operates a tractor by manipulating the throttle, levers, and pedals and steers tractor by working levers or pedals that individually control both crawler treads; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
- (xvii) "Soil Stabilization Machine Operator" means one who operates a self-propelled rubber tired or crawler-type equipment to mix and spread road materials for soil

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stabilization with cement, asphalt, lime, fly ash, etc.; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

(xviii) "Striping Machine Operator" means one who rides the back of a paint truck and uses a specialized machine on pavement to apply paint or thermo plastic; aligns lower carriages as necessary; and may perform other related duties.

(xix) "Track Drill Operator" means one who operates a drilling machine, such as a wagon drill, air trac, well driller, etc. for the purpose of drilling rock, shale, or other materials; starts, stops and services portable air compressors; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

(xx) "Tractor Operator (Boom and Hoist)" means one who operates a rubber tired or crawler-type tractor with an attached boom and hoist; moves levers to raise and lower materials and miscellaneous items in trenches and excavations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.

7. "Concrete Finisher" means one who finishes wet surfaces to grade with hand tools, floats, trowels, screeds, templates and straight edges on all types of concrete work requiring a fine finish; and may perform other related duties.
8. "Drill Operator (Caisson)" means one who sets up and operates a drill mechanism for caissons; levels and positions drill; adjusts angle of drill; controls drilling and speed of drill by moving controls; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
9. "Electrician" means one who plans and executes the layout of electrical conduits; installs wiring systems, switch-panels, and buss bars; works on overhead distribution systems and underground distribution systems; and may perform other related duties.
10. "Farm Tractor Operator (Power Broom)" means one who operates a small gasoline or diesel powered four-wheel, rubber tired tractor of the farm type; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The tractor is used to pull pneumatic rollers and is operated by steering with the wheel and brake clutch.)
11. "Ironworker - Reinforcing" means one who performs layout work of rods within area to be paved; fastens rods in place with wire or fasteners and bends or adjusts as required; selects and places steel bars or spirals in concrete forms to reinforce concrete; may cut rods with hack-saw or oxyacetylene torch; may bend rods, using a rod-bending machine; may prefabricate reinforcement assembly for placement complete in forms; and may perform other related ironwork duties.
12. "Ironworker - Structural" means one who works as a member of a group that raises and places fabricated structural-steel members, such as girders, plates, and columns to unite them permanently to form a completed structural-steel framework; heats rivets, signals erection cranes, splices cables, and rigs equipment which may include dismantling and erecting large units of equipment; may spin suspension bridge cables; and may perform other related ironwork duties.

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13. "Mechanic - Class I (Heavy Duty)" means one who assembles, sets up, adjusts, maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers, and paving equipment; may perform the duties of a welder in repair of equipment; and may perform other related duties.
14. "Mechanic - Class II (Light Duty)" means one who assembles, sets up, adjusts, maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers, and paving equipment; may perform the duties of a welder in repair of equipment; and may perform other related duties and periodically needs and receives assistance from a mechanic - class I.
15. "Painter or Sandblaster" means one who sandblasts surfaces of structures, stone, etc. by currents of air or steam carrying sand at a high velocity in painting preparation; paints sign posts, signs, bridges and structures, etc. with either a brush, roller or spray; and may perform other related duties.
16. "Powder Person (Blaster)" means one who supervises and assists in locating, loading, and firing blast holes for breaking up hard materials; enlarges bottom of drilled holes by discharging small quantities of explosives; inserts detonator in a charge of explosive, attaching a fuse or electrical wires, the stick and detonator forming a primer, the discharge of which effects the discharge of the remainder of the explosive; charges hole by placing explosive, including stick that contains detonator, in hole and tamping lightly with a pole; depresses handle of blasting machine or lights fuse to fire explosive; may use prima-cord or delay caps; and may perform other related duties.
17. "Skilled Laborer" means one who is an air tool operator, asphalt raker, chain saw operator, concrete mixer operator (less than 1 yard), concrete rubber, edger, fence erector, form setter (steel road), guard rail erector, mechanics helper (tire changer or oiler), mortar mixer, nozzleman or gun operator (gunite), pipelayer, sign erector, or survey helper/rodman; and is further defined as follows:
 - (i) "Air Tool Operator" means one who is a semi-skilled laborer who uses a tool driven by compressed air to perform such work as breaking old pavement, loosening or digging hard earth, trimming bottoms and sides of trenches, breaking large rocks, chipping concrete, trimming or cutting stone or compaction of earthen backfill; and may perform other related semi-skilled duties.
 - (ii) "Asphalt Raker" means one who distributes asphalted road-building materials evenly over a road surface by raking and brushing material to correct thickness; directs asphalt shovelers when to add or take away material to fill low spots or to reduce high spots; and may perform other related duties.
 - (iii) "Chain Saw Operator" means one who operates a chain saw with employer fuel or current for power; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
 - (iv) "Concrete Mixer Operator (Less Than 1 Yard)" means one who operates a small portable concrete mixing machine to mix sand, gravel, cement and water to make concrete; starts power units and does loading of materials; controls mixing by levers to discharge concrete from drums; rises drums with water to remove

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adhering concrete; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The small machines are sometimes charged by operators shoveling in the proportions of materials directly into the mixing drums, and some others have a skip into which materials are shoveled or dumped before being hoisted into the mixing drums.)

- (v) "Concrete Rubber" means one who uses tools on exposed surfaces of concrete masonry after the forms have been removed to patch holes with fresh concrete; rubs surfaces with abrasive stone to remove rough spots; and may perform other related duties.
- (vi) "Fence Erector" means one who digs holes for posts, drives posts, attaches fences, and pours incidental concrete; and may perform other related duties.
- (vii) "Form Setter (Steel Road)" means one who fits together, aligns and grades metal road forms for holding concrete in place on road and street surfaces; dismantles, moves and cleans forms after concrete hardens; and may perform other related semi-skilled duties.
- (viii) "Guard Rail Erector" means one who digs holes for posts, drives posts, attaches guard rails, pours incidental concrete, and paints guard rails; and may perform other related duties.
- (ix) "Nozzleman or Gunman (Gunit)" means one who handles the equipment and directs the placing of concrete or mortar that is moved by pneumatic equipment such as gunit; may fine-grade and place wire mesh at times; and may perform other related semi-skilled duties.
- (x) "Pipelayer" means one who lays, connects, inspects and tests water lines, force mains, gas lines, sanitary or storm sewers and drains, underground telephone and electric ducts or other utilities manufactured from clay, concrete, steel, plastic, cast iron pipe, or other similar materials; may smooth bottom of trench to proper elevation by scooping with a shovel; receives pipe lowered from top of trench; inserts spigot end of pipe into bell end of last laid pipe; adjusts pipe to line and grade; caulks and seals joint with cement or other sealing compound; may connect threaded or flanged joint pipe; may assemble and place corrugated metal or plastic pipe; and may perform other related duties.
- (xi) "Sign Erector" means one who reads plans; makes layouts for erection of signs; cuts, ties, and sets reinforcing steel; sets forms for concrete; pours concrete; sets anchor bolts; erects wood or metal structures; places clamps, brackets, or other required hardware on structures; and may perform other related duties.
- (xii) "Survey Helper/Rodman" means one who performs any of the following duties to assist in surveying land: holds level or stadia rod at designated points to assist in determining elevations and laying out stakes for mapmaking, construction, mining, land, and other surveys; calls out reading or writes station number and reading in notebook; marks points of measurement with elevation, station number, or other identifying mark; measures distance between survey points, using a steel or cloth tape or surveyor's chain; marks measuring points with keel (marking crayon), paint sticks, scratches, tacks, or stakes; places stakes at designated points and

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drives them into the ground at specified elevations, using a hammer or hatchet; and cuts and clears brush and trees from the line of survey, using a brush hook, knife, ax, or other cutting tools.

(xiii) "Welder's Helper (Any Class to Which the Work Is Incidental)" means one who is a learner or worker semi-skilled in welding who assists the welder in electric arc and acetylene welding; assists in oxyacetylene cutting and layout; and may perform other related duties.

18. "Survey Instrument Operator" means one who obtains data pertaining to angles, elevations, points, and contours used for construction, mapmaking, mining, or other purposes, using an alidade, level, and transurveying instruments; compiles notes, sketches, and records of data obtained and work performed; directs work of subordinate members of survey team; and performs other duties relating to surveying work as directed by chief of party.
19. "Sweeping Machine (Vacuum) Operator" means one who drives a sweeping machine that cleans streets of trash and other accumulations; fills water tank of machine from hydrant; drives sweeper along street near curbs; moves controls to activate rotary brushes and water spray so that machine automatically picks up dust and trash from paved streets and deposits it in a dirt trap at the rear of the machine; and pulls lever to dump refuse in piles at curbs for removal.
20. "Truck Driver (2 Axles)" means one who drives a multi-rear axle truck for transporting construction materials; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The truck may have various kinds of beds attached, such as a dump, flat bed, water tank, etc. The truck may be a water wagon, service truck, hoist truck, etc.)
21. "Truck Driver (3 or 4 Axles)" means one who may pull a semi-trailer or trailer to transport construction equipment and materials.
22. "Truck Driver (5 or More Axles/Heavy Duty Off-the-Road)" means one who operates heavy duty off-road or rock moving equipment, such as, but not limited to a Koehring dumpster, Euclid either back or bottom dump, International Payhauler, etc.; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties.
23. "Unskilled Laborer" means one who works in construction covering many unskilled occupations; works with all crews doing everything from pick and shovel work to cleaning up lumber, and hammering, shoveling and placing concrete; applies coats of oil to inside face of forms; strips forms; works on rock crushers to feed traps; opens cement sacks to batch plant; lowers pipes into ditches for pipelayers; works with dirt crew to move construction layout stakes; serves as dump man; spreads hot asphaltic material over roadbeds with shovel; operates hand concrete buggy or wheelbarrow; helps painter to prepare surfaces for painting and cleans paint equipment; carries rods to forms or attaches them to cable of hoisting machines; and may perform other related duties; and is further defined as follows:
 - (i) "Mortar Mixer (Hand)" means one who mixes proportions of material in skip; may do or oversee loading of materials in skip by shoveling; and may perform other related duties.

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24. "Worksite Traffic Coordinator" means one who supervises and coordinates activities of workers engaged in installing and repairing traffic signals, and erecting signs or devices, such as traffic islands and barriers; and may perform other related duties.

Authority: T.C.A. §§12-4-405(3)(A), 12-4-405(3)(B), 12-4-411, and 12-4-415.

Rule 0800-3-2-.05 Regulations for Contractors and Contracts is amended by deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

0800-3-2-.05 REGULATIONS FOR CONTRACTORS AND CONTRACTS.

- (1) All State construction project contracts between the contracting state agency and the building or highway contractors or subcontractors shall include the following:
- (a) All contractors and subcontractors shall:
1. Classify all covered workers in conformity with the schedule of classifications issued by the Commission in accordance with Rule 0800-3-2-.02.
 2. Post the prevailing wage rates at the site of construction in a prominent place and make these rates available to all covered workers employed on the project at all reasonable times.
 3. Pay overtime compensation as required by any applicable federal or state laws, rules, or regulations or as may be required by the contract with the state agency.
 4. Make only those deductions from wages authorized by law.
 5. Submit weekly a copy of all payrolls to the contracting state agency. The contractor or subcontractor shall certify that the payrolls are correct and complete, and that the wage rates paid to covered workers during the reporting period equal or exceed those determined by the Commission, and that the classifications set forth for each covered worker conform with the work s/he performs. The contracting state agency shall promptly submit the contractor's or subcontractor's weekly payroll statements to the Commission. The contractor or subcontractor shall make its employment records available for inspection by representatives of the contracting state agency, the Commission, and the Tennessee Department of Labor and Workforce Development, and will permit such representative to visit construction projects at all reasonable times.
 6. Incorporate into each awarded contract a bonding provision in accordance with T.C.A. §12-4-409.
 7. Pay the rate of wages established by the Commission on all classifications of work that may be used by the contractor or subcontractor in carrying out the contractual agreement between the contractor or subcontractor and the contracting state agency.
 8. The Commission or any employee of any contractor or subcontractor whose wages are determined pursuant to the Act may maintain an action against any contractor or subcontractor for the breach of any condition of any performance bond given under the provisions of the Act, and, in case of breach of any provision of such bond, the

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particular state agency which awarded the contract may advertise the work and relet the contract in the same manner as the original letting.

Authority: T.C.A. §§12-4-403, 12-4-405(1)(B), 12-4-405(4), 12-4-408, 12-4-409, 12-4-410, 12-4-411, 12-4-412, 12-4-413, and 12-4-415.

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of September, 2005. (09-09)

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BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-101, 63-6-201, 63-6-204, 63-6-207, 63-6-214, 63-6-224, and Public Chapter 286 of the Public Acts of 2005. 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 8:45 a.m. (CST) on the 15th day of November, 2005.

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, 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 0880-2-.03 Licensure Process U.S. and Canada Medical School Graduates, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding six [6] months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signatory's letterhead.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-2-.04 Licensure Process International Medical School Graduates is amended by deleting paragraph (7) in its entirety and substituting instead the following language, so that as amended, the new paragraph (7) shall read:

- (7) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding six [6] months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signatory's letterhead.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

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Rule 0880-2-.05 Licensure of Out of State and International Applicants, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding six [6] months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signatory's letterhead.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-2-.20 Medical Professional Corporations and Medical Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) 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 paragraphs (1), (2), (3), and (5) shall read:

- (1) Medical Professional Corporations (MPC) – Except as provided in this rule Medical Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A MPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic MPC doing business in Tennessee:
 - 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in another state; and/or
 - 2. A foreign or domestic general partnership, MPC or M PLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an M PLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
 - (c) Officers and Directors of Medical Professional Corporations -
 - 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:

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- (i) Secretary;
- (ii) Assistant Secretary;
- (iii) Treasurer; and
- (iv) Assistant Treasurer.

2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48- 101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a MPC.

(d) Practice Limitations

1. Physician incorporators, shareholders, officers, or directors of a MPC, acting individually or on behalf of, or collectively as the MPC, shall exercise only such authority as an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPC.
2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPC that may violate the code of ethics or which gives the MPC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
3. Engaging in, or allowing another physician incorporator, shareholder, officer, or director, while acting on behalf of the MPC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b)(1) or 63-9-111 (b)(1).
4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPC.
5. Nothing in these rules shall be construed as prohibiting a MPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician incorporators, directors, officers, shareholders, employees or contractors of the MPC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
6. Nothing in these rules shall be construed as prohibiting a physician from owning shares of stock in any type of professional corporation other than a MPC so long as such ownership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.

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- (2) Medical Professional Limited Liability Companies (MPLLC) – Except as provided in this rule Medical Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
 - (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 only the following may be members or holders of financial rights of a foreign or domestic MPLLC doing business in Tennessee:
 - 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in other states; and/or
 - 2. A foreign or domestic general partnership, MPC or MPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an MPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
 - (c) Managers, Directors or Governors of a MPLLC
 - 1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 - 2. Only persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a MPLLC.
 - (d) Practice Limitations
 - 1. Physician members or holders of financial rights, managers, directors, or governors of a MPLLC, acting individually or on behalf of, or collectively as the MPLLC, shall exercise only such authority as an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral deci-

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sions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPLLC.

2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPLLC that may violate the code of ethics or which gives the MPLLC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
 3. Engaging in, or allowing another physician member, officer, manager, director, or governor, while acting on behalf of the MPLLC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b) (1) or 63-9-111 (b) (1).
 4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPLLC.
 5. Nothing in these rules shall be construed as prohibiting a MPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician members or holders of financial rights, governors, officers, managers, employees or contractors of the MPLLC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6- 204.
 6. Nothing in these rules shall be construed as prohibiting a physician from being a member of any type of professional limited liability company other than a MPLLC so long as such membership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 7. All MPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a MPC or a MPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the MPC and/or MPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).

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- (c) The notice of violation shall state that the MPC and/or M PLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the MPC and/or M PLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the MPC and/or M PLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a MPC and/or M PLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in an MPC or an M PLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-101, 63-6-201, 63-6-204, 63-6-214, and Public Chapter 286 of the Public Acts of 2005.

Rule 0880-5-.05 Educational Course, Approval and Curriculum for Limited Certification, is amended by deleting subparagraph (2) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (c) shall read:

- (2) (c) Clinical Training - Defined as "hands-on" observation and participation in the production of diagnostic radiographs. Clinical training must be supervised by either a residency-trained radiologist, or by a licensed physician in conjunction and consultation with a fully-licensed and registered operator (A.R.R.T. technologist) with at least three (3) years experience when appropriate. This training shall consist of at least sixty (60) clock hours for each specialty area in which certification is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-224.

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Rule 0880-5-.06 Examinations for Certification, is amended by deleting part (2) (a) 3. in its entirety.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-224.*

Rule 0880-5-.11 Bone Densitometry, is amended by deleting part (4) (e) 4. in its entirety and substituting instead the following language, so that as amended, the new part (4) (e) 4. shall read:

- (4) (e) 4. All training must result in a Statement of Training being signed by the Manufacturer (or authorized Representative) or by a person holding a Certificate in Bone Densitometry and who has received machine-specific training by the Manufacturer on the appropriate machine. The Statement of Training shall be issued to the trainee, and sent to the Board's Administrative Office.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-224.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of September, 2005. (09-24)

RULEMAKING HEARINGS

BOARD OF MEDICAL EXAMINERS - 0880 ADVISORY COMMITTEE FOR ACUPUNCTURE.

There will be a hearing before the Tennessee Board of Medical Examiners' Advisory Committee for Acupuncture to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-6-1004, 63-6-1007, and Public Chapters 234 and 467 of the Public Acts of 2005. 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 December, 2005.

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 0880-12-.19 Committee Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (5) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (8), so that as amended, the new catchline and the new paragraphs (5) and (8) shall read:

0880-12-.19 COMMITTEE OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (5) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (8) Screening Panels - The Committee adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-6-1004, 63-6-1007, and Public Chapter 234 of the Public Acts of 2005.

Rule 0880-12-.20 Advertising, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1) through (6):

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- (1) **Policy Statement.** The lack of sophistication on the part of many of the public concerning acupuncture, the importance of the interests affected by the choice of an acupuncturist and the foreseeable consequences of unrestricted advertising by acupuncturists which is recognized to pose special possibilities for deception, require that special care be taken by acupuncturists to avoid misleading the public. The acupuncturist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by acupuncturists 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 acupuncturist who is certified to practice in Tennessee.
 - (b) **Certificate holder** - Any person holding a certificate to practice acupuncture 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 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**
 - (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 certificate holder's customary or usual fee charged for the service; and
 2. The certificate holder 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.

RULEMAKING HEARINGS

- (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.**
 - 1. 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.
 - 2. 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.
- (4) **Advertising Content.** The following acts or omissions in the context of advertisement by any certificate holder shall constitute false or fraudulent conduct, and subject the licensee to disciplinary action pursuant to T.C.A. §63-6-1007(1):
 - (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 certificate holder 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 certificate holder knows or should know is beyond the certificate holder'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 certificate holder 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 certificate holder 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 acupuncture procedures or products that involve significant risks without including:

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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 certificate holder to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a certificate holder's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual certificate holder'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 certificate holders practicing at a particular location shall:
1. Upon request provide a list of all certificate holders practicing at that location; and
 2. Maintain and conspicuously display at the certificate holder's office, a directory listing all certificate holders practicing at that location.
- (q) Failure to disclose the fact of giving compensation or anything of value to representative 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 certificate holder's departure, the use of the name of any certificate holder 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 certificate holder 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

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- (a) Each certificate holder 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 or certified professional employees acting as an agent of such firm or entity.
- (b) Any and all advertisement are presumed to have been approved by the certificate holder 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 certificate holder 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 Board or its designee.
- (d) At the time any type of advertisement is placed, the certificate holder 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, 63-6-101, 63-6-1004, 63-6-1007, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of September, 2005. (09-11)

RULEMAKING HEARINGS

BOARD OF NURSING - 1000

There will be a hearing before the Tennessee Board of Nursing to consider the promulgation of amendments to rules and new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207. 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 28th day of December, 2005.

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 1000-1-.01, Licensure by Examination, is amended by deleting subparagraph (2) (e) and paragraph (3) in their entirety and renumbering the present paragraph (4) as paragraph (3).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-105, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-1-.02, Licensure Without Examination: By Interstate Endorsement, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Temporary Permit to Practice Professional Nursing – The board may issue a temporary permit to a professional or registered nurse duly licensed according to the laws of another state and who has made application for permanent licensure in Tennessee, pursuant to paragraphs (1) and (2) of this rule. A permit issued under the provisions of this paragraph shall be valid for a single period of six (6) months.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-105, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-1-.03, Biennial Registration (Renewal), is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) The Board may request submission of evidence of satisfactory health, character, or professional nursing competence before renewal of registration if a licensee has been inactive in

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nursing for five (5) years or more, or if questions pertaining to health, character, or competence have been brought to the attention of the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-114, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-1-.12, Fees, is amended by deleting subparagraph (1) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (c) shall read:

- (1) (c) R.N. Temporary Permit \$ 25.00

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-105, 63-7-106, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-1-.15, Scope of Practice, 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) Determination and Pronouncement of Death – Pursuant to the restrictions and guidelines found in T.C.A. § 68-3-511, a registered nurse may make an actual determination and pronouncement of death for:
- (a) residents of a hospice, a nursing home, or an assisted-care living facility; and
 - (b) patients in a hospital; and
 - (c) patients who were receiving the services of a licensed home care organization at the time of death; and
 - (d) patients who were receiving the services of a program for all-inclusive care for the elderly (PACE) which is a permanent Medicare provider as approved by the Centers for Medicare and Medicaid Services.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-207, 68-3-511, 68-11-201, and Public Chapter 222 of the Public Acts of 2005.

Rule 1000-2-.01, Licensure by Examination, is amended by deleting paragraphs (4) and (5) in their entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-110, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-2-.02, Licensure Without Examination: Interstate Endorsement, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Temporary Permit to Practice Practical Nursing – The board may issue a temporary permit to a practical nurse duly licensed according to the laws of another state and who has made application for permanent licensure in Tennessee, pursuant to paragraphs (1) and (2) of this rule. A permit issued under the provisions of this paragraph shall be valid for a single period of six (6) months.

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Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-110, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-2-.03, Biennial Registration (Renewal), is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) The Board may request submission of evidence of satisfactory health, character, or practical nursing competence before renewal of registration if a licensee has been inactive in nursing for five (5) years or more, or if questions pertaining to health, character, or competence have been brought to the attention of the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-114, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

Rule 1000-2-.12, Fees, is amended by deleting subparagraph (1) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (c) shall read:

- (1) (c) L.P.N. Temporary Permit \$ 25.00

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-110, 63-7-111, 63-7-207, and Public Chapter 387 of the Public Acts of 2005.

NEW RULES

CHAPTER 1000-1 RULES AND REGULATIONS OF REGISTERED NURSES

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CHAPTER 1000-2 RULES AND REGULATIONS OF LICENSED PRACTICAL NURSES

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1000-1-.19 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning nursing services, the importance of the interests affected by the choice of a registered nurse and the foreseeable consequences of unrestricted advertising by nurses which is recognized to pose special

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possibilities for deception, require that special care be taken by nurses to avoid misleading the public. The registered nurse must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by nurses 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 registered nurse who is licensed to practice in Tennessee.
- (b) **Licensee** - Any person holding a license to practice as a registered nurse 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

- (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.

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- (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.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject the licensee to disciplinary action pursuant to Rule 1000-1-.13:
 - (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 materials 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.

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- (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 Board 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 advertise-

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ment 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 Board 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, 63-7-115, 63-7-207, and Public Chapter 467 of the Public Acts of 2005.*

1000-2-.18 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning nursing services, the importance of the interests affected by the choice of a licensed practical nurse and the foreseeable consequences of unrestricted advertising by nurses which is recognized to pose special possibilities for deception, require that special care be taken by nurses to avoid misleading the public. The licensed practical nurse must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by nurses 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 licensed practical nurse who is licensed to practice in Tennessee.
 - (b) Licensee - Any person holding a license to practice as a licensed practical nurse 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.

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- (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.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject the licensee to disciplinary action pursuant to Rule 1000-1-.13:
- (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.

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- (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 Board 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

RULEMAKING HEARINGS

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 Board 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, 63-7-115, 63-7-207, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of September, 2005. (09-32)

RULEMAKING HEARINGS

BOARD OF OSTEOPATHIC EXAMINATION - 1050 COUNCIL OF CERTIFIED PROFESSIONAL MIDWIFERY

There will be a hearing before the Tennessee Board of Osteopathic Examination's Council of Certified Professional Midwifery to consider the promulgation of amendments to rules and new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-9-101, 63-9-111, 63-29-107, 63-29-108, 63-29-109, 63-29-114, 63-29-116, and Public Chapters 234 and 467 of the Public Acts of 2005. 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 20th day of December, 2005.

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 1050-5-.05 Certification Process, is amended by adding the following language as new subparagraph (2) (g):

- (2) (g) An applicant shall cause to be submitted to the Council's administrative office directly from the vendor identified in the Council's certification application materials, the result of a criminal background check.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-9-111, 63-29-107, 63-29-114, and 63-29-116.

Rule 1050-5-.19 Council Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (8), so that as amended, the new catchline and the new paragraph (8) shall read:

1050-5-.19 COUNCIL OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (8) Screening Panels - The Council adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-9-101, 63-29-107, 63-29-114, 63-29-116, and Public Chapter 234 of the Public Acts of 2005.

RULEMAKING HEARINGS

NEW RULES

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1050-5-.03 Use of Titles

1050-5-.14 Advertising

1050-5-.03 Use of Titles. Any person who possesses a valid, unsuspended and unrevoked certificate issued by the Council has the right to use the title "Certified Professional Midwife (CPM-TN)", as defined in T.C.A. §§ 63-29-102. Violation of this rule or statutes regarding use of titles, T.C.A. §§ 63-29-102 and 63-29-109, shall constitute unprofessional conduct and subject the certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-29-102, 63-29-107, 63-29-108, 63-29-109, 63-29-114, and Public Chapter 467 of the Public Acts of 2005.

1050-5-.14 ADVERTISING.

- (1) The lack of sophistication on the part of many of the public concerning midwifery, the importance of the interests affected by the choice of a midwife and the foreseeable consequences of unrestricted advertising by midwives which is recognized to pose special possibilities for deception, require that special care be taken by Certified Professional Midwives to avoid misleading the public. Midwives must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by midwives 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 professional midwife who is certified to practice in Tennessee.
 - (b) Certificate Holder - Any person holding a certificate to practice midwifery 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 organization for any 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 certificate holder's customary or usual fee charged for the service, and
 - 2. The certificate holder 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.
- (4) Advertising Content - The following acts or omissions in the content of advertisement by any certificate shall constitute unprofessional conduct, and subject the licensee to disciplinary action.
- (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 (1) certificate holder 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 certificate holder knows or should know is beyond the certificate holder'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 quality of competency of a service or treatment offered by a certificate holder 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 certificate holder can achieve.

RULEMAKING HEARINGS

- (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 materials, fact, or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of 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 Council 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 certificate holder's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual certificate holder'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 certificate holders practicing at a particular location shall:
 - 1. Upon request provide a list of all certificate holders practicing at that location, and
 - 2. Maintain and conspicuously display at the certificate holder's office, a directory listing all certificate holders 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 makes the fact of compensation apparent.
- (r) After thirty (30) days of the certificate holder's departure, the use of the name of any certificate holder formerly practicing at or associated with any advertised location or on office signs or buildings is prohibited. 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.

RULEMAKING HEARINGS

- (s) Stating or implying that a certain certificate holder provides all services when any such services are performed by another certificate holder.
 - (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 certificate holder 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 or certified professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the certificate holder 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 certificate holder 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 Council or its designee.
 - (d) At the time any type of advertisement is placed, the certificate holder 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 parts 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, 63-9-101, 63-29-107, 63-29-114, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 1st day of September, 2005. (09-04)

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 1 p.m. (central) on the 21st day of November, 2005.

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 of 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 138.

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 PROPOSED RULES

CHAPTER 1220-4-13 WASTEWATER REGULATIONS

Tennessee Regulatory Authority Rule 1220-4-13, shall read:

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1220-4-13-.01 APPLICATION AND PURPOSE

- (1) These rules shall apply to public wastewater utilities as defined in these rules and also in Tenn. Code Ann. § 65-4-101.
- (2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

RULEMAKING HEARINGS

Authority: T.C.A. § 65-2-102

1220-4-13-.02 DEFINITIONS

- (1) Authority - Tennessee Regulatory Authority.
- (2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to Tenn. Code Ann. § 65-4-201 et seq.
- (3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater facility.
- (4) Local government – any political subdivision of the state of Tennessee, including, but not limited to a county or incorporated municipality.
- (5) Public utility or public wastewater utility - any person, partnership, corporation, company, association, or two or more persons having a joint or common interest that owns, operates, and manages any wastewater system for the public for compensation within the state subject to the jurisdiction of the Authority.
- (6) TDEC – Tennessee Department of Environment and Conservation.
- (7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters.

Authority: T.C.A. §§ 65-2-102 and 65-4-101(6)

1220-4-13-.03 RETENTION OF RECORDS

Unless otherwise specified by the Authority, the National Association of Regulatory Utilities Commissioners, or other governmental agency, all records required by these rules shall be preserved for the period of three (3) years. All records shall be kept at the office or offices of the public wastewater utility in Tennessee or shall be made available to the Authority or its authorized representatives upon request.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

1220-4-13-.04 DATA TO BE FILED WITH THE AUTHORITY

The public wastewater utility shall file with the Authority the following documents and information, and shall maintain such documents and information in a current status. Rates, schedules, special contracts, and other charges for and rules and regulations governing wastewater service shall not become effective until filed with and notified as effective by the Authority.

- (1) A copy of the public wastewater utility's tariff as specified in Rule Chapter 1220-4-1-.02 that includes the rates, rules, and terms and conditions, describing the policies and practices in rendering service that conform with all applicable rules and regulations.

RULEMAKING HEARINGS

- (2) Any public wastewater utility desiring to obtain a Certificate of Public Convenience and Necessity (CCN) authorizing such person, firm or corporation to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule Chapter 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the applied for wastewater services. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.
- (3) Before initiation of service, the public wastewater utility shall furnish the Authority with the following:
 - (a) TDEC approval of the wastewater system design.
 - (b) As-Built certification by its design engineer that states that the wastewater system was constructed according to plans and specifications approved by TDEC.
 - (c) TDEC permit for the wastewater system.
- (4) Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in compliance with these rules and requirements established by the Authority.

Authority: T.C.A. §§ 65-2-106, 65-2-102, 65-4-104, and 65-4-201

1220-4-13-.05 MAPS AND RECORDS

- (1) Each public wastewater utility shall keep on file in its office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service upon its wastewater system, including a statement of time, duration, and cause of such interruptions.

Authority: T.C.A. § 65-2-102

1220-4-13-.06 ADEQUACY OF FACILITIES

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local governmental agencies to assure, as far as reasonably possible, continuity of service, and uniformity in the quality of service furnished so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to assure safe, adequate and continuous service at all times by appropriate qualified staff and shall make inspections on a regular basis. These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years.

RULEMAKING HEARINGS

- (3) Each public wastewater utility shall provide service in the area described in its CCN within a reasonable period of time. If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, or finds that extension of service to any such customer could be accomplished only at an unreasonable cost and that addition of the designated service area to that of another provider of wastewater services is economical and feasible, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that particular public wastewater utility.
- (4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve, whether or not there has been a demand for such service, within two (2) years after the date of authorization for service to such part, the Authority may require the public wastewater utility to demonstrate either that it intends to provide service in the area or part thereof or that, based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation of authorization or amendment of a CCN.
- (5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules.
- (6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with Tenn. Code Ann. § 65-2-106 and after notice and an opportunity to be heard.

Authority: T.C.A. §§ 65-2-102; 65-4-104; and 65-4-203

1220-4-13-.07 FINANCIAL SECURITY

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish an acceptable financial security in an amount not less than \$20,000 to the Authority using a format prescribed by the Authority prior to providing service to a customer. The public wastewater utility shall ensure that the financial security is maintained in continuous force in conformity to this rule.
- (2) Proof of financial security shall be furnished to the Authority for review and approval as follows:
 - (a) The amount of the financial security required by public wastewater utilities holding a CCN at the time these rules become effective shall be one hundred percent (100%) of the gross annual revenue in the most recent UD16 or, if a UD16 has not been filed, the estimated gross annual revenue forecasted in the CCN application submitted to the Authority. A public wastewater utility holding a CCN at the time these rules become effective shall file proof of the required financial security with the Authority seventy-five (75) days after the effective date of these rules.
 - (b) Public wastewater utilities submitting their initial application for a CCN shall be required to present to the Authority, prior to approval of this application, proof of financial security in the amount of one hundred percent (100%) of the forecasted gross annual revenue from the wastewater system project(s) submitted in the application for a CCN.

RULEMAKING HEARINGS

- (c) The Authority shall review each subsequent UD16, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.
- (3) Sufficient financial security shall be provided in one of the following manners:
 - (a) The financial security may be a bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee.
 - (b) Irrevocable letters of credit issued by financial institutions acceptable to the Authority.
 - (c) The public wastewater utility shall provide written notification by means of both certified mail (return receipt requested) and regular mail to the Authority and the holder of the financial security at least sixty (60) days prior to any termination action, expiration date for an irrevocable letter of credit that will not be renewed, or the expiration date for a bond of non-perpetual duration that is not to be renewed.
- (4) If the public wastewater utility proposes to post financial security other than that permitted above, a hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule Chapter 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.
- (5) Financial securities required by any local government may be considered by the Authority as fulfilling this financial security obligation. The public wastewater utility shall file with the Authority evidence of this financial security and a written request that the Authority consider the security as fulfilling Rule Chapter 1220-4-13-.07(2).
- (6) The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on an individual basis.
 - (a) Each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the pass-through mechanism. The tariff filing shall contain a price-out calculation (number of customers multiplied by the pass-through mechanism) supporting the amount of increase proposed and the percentage increase this represents. This supporting calculation shall be based on the cost of the financial security to the public wastewater utility, the number of customers forecasted for the ensuing twelve (12) month period of operations, and the current approved monthly customer rates. Where applicable, a separate increase shall be calculated for residential and commercial customers.
 - (i) For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.

RULEMAKING HEARINGS

- (ii) For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff shall be submitted to the Authority with its CCN application.
- (b) On May 1 of each year, each public wastewater utility shall file a tariff with the Authority for its consideration, containing a true-up calculation for the preceding period and updating the financial security pass-through percentage calculation going forward. The tariff filing shall include but not be limited to the following:
 - (i) The actual financial security costs for the most recent twelve (12) month period ending December 31. For the first year this rule is in effect and the first year of operations in the case of a new CCN or amended CCN, the true-up calculation shall be based on the actual months the security was in effect.
 - (ii) The actual financial security costs collected from its customers during the previous twelve (12) months or part thereof.
 - (iii) A true-up calculation to establish the amount of refund or surcharge due to or required from its customers. This residual amount shall be subtracted from or added to the estimated financial security cost for the next twelve (12) month period.
 - (iv) The rate adjustments stated as an amount to be reflected in a customer's bill and the corresponding percentage adjustment.
- (7) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness or incapacity, or refuses to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action that may include making a claim against the public wastewater utility's bond or other financial security.
- (8) Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. Public wastewater utility employees having signature authority over such account may be subject to a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
- (9) The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Within one year from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of December 31, 2005 to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in subsection (8) of this Rule. The financial condition of any applicant seeking a CCN to provide wastewater service after December 31, 2005 shall be reviewed by the Authority and a determination shall be made regarding the establishment of a reserve/escrow account during the CCN application process. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.

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Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305

1220-4-13-.08 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, ACQUISITION, OR ABANDONMENT

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.
- (2) Any person, lessee, trustee, or receiver owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer, merge, terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.
- (3) The Petition filed with the Authority shall include the following:
 - (a) The name, address, and telephone number of the public wastewater utility.
 - (b) The identity of the person(s) to contact regarding the Petition with their address telephone number, and fax number.
 - (c) The location of the public wastewater utility's books and records.
 - (d) The purpose and filing date of the Petition.
 - (e) The proposed effective date of the transaction.
 - (f) The name, address, and telephone number of any potential buyer.
 - (g) A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.
 - (h) A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.
 - (i) A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations.
 - (j) A statement detailing the effect of the transaction upon customers.
 - (k) A customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no less than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For

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good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider of wastewater services. Good cause includes, but is not limited to, evidence that the current provider is no longer providing wastewater service in Tennessee.

Authority: T.C.A. §§ 65-4-102, 65-4-104, 65-4-112, and 65-4-113

1220-4-13-.09 RECEIVERSHIPS

- (1) Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13-07(7) above, the funds of that public wastewater utility funds, including escrow accounts, shall be subject to forfeiture in the event that the public wastewater utility goes into receivership or is transferred to another owner for any reason. In addition, after notice and hearing, the Authority may take the following actions through appropriate court action:
 - (a) Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to:
 - (i) Operate the wastewater system(s) in compliance with law and the Authority's orders; and,
 - (ii) Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
 - (b) Provide for the appointment of a receiver by the Authority that has demonstrated the ability to:
 - (i) Operate the wastewater system(s) in compliance with law and the Authority's orders; and,
 - (ii) Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
- (2) Before taking such action as provided in subparagraphs (1)(a) and (b), the Authority shall give notice of the hearing to the following:
 - (a) The subject public wastewater utility.
 - (b) Other public wastewater utilities in Tennessee.
 - (c) All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system.
 - (d) Holder of the security.
- (3) An order under subparagraph (1)(a) shall provide that:
 - (a) The entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition.

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- (b) The specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined.
- (4) An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:
 - (a) A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.
 - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
 - (c) Other incentives to the entity acquiring the subject public wastewater utility.
- (5) If the Authority takes action as provided in paragraph (1) for the appointment of a receiver, the receiver shall:
 - (a) Have the same rights and duties under Tennessee law as a public wastewater utility.
 - (b) Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility:
 - (i) Has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s); and
 - (ii) Has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority.
- (6) The appointment of a receiver shall be accomplished under an Interim Operating Agreement until a long-term option for the provision of wastewater service is available to the customers.
- (7) Upon appointment of a receiver, the Authority shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer to another owner.
- (8) Within thirty (30) days of the appointment of the receiver, the receiver shall file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver.
- (9) The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board.
- (10) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).
- (11) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority.

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- (12) At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds.

Authority: T.C.A. §§ 65-4-102, 65-4-104, and 65-4-106

1220-4-13-.10 CUSTOMER RELATIONS

Each public wastewater utility shall comply with applicable provisions of Rule Chapter 1220-4-3-.14 including but not limited to the following:

- (1) Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.
- (2) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints. If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue; the time, date, and action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request at any time within the period prescribed for retention of such records.
- (3) Each public wastewater utility shall, within ten (10) business days after receipt of a complaint forwarded by the Authority, file a written reply with the Authority.
- (4) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.
- (5) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority: T.C.A. §§ 65-4-102 and 65-4-104

1220-4-13-.11 CUSTOMER BILLING

- (1) Before customers are charged for wastewater services, the Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility. All bills for wastewater service shall state how the charge is calculated. The bill form used shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule Chapter 1220-4-3-.16.
- (2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall avoid sending a customer two successive estimated bills.
- (3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected

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therewith, than those rates and charges approved by the Authority and in effect at that time. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate (e.g. high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.

- (4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which service was not provided. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate. The public wastewater utility may refund the amount owed as credit toward the customer's subsequent bill for service.
- (5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule Chapter 1220-4-3-.18. The public wastewater utility shall retain customer billing records for not less than three (3) years.

Authority: T.C.A. §§ 65-4-102 and 65-4-104

1220-4-13-.12 DENYING OR DISCONTINUING SERVICE

- (1) No public wastewater utility shall deny or discontinue service to any customer without first providing notice to the customer and diligently trying to induce the customer to comply with its rules and regulations provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule Chapter 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing in a "Subscription Service Contract" that would for the various reasons listed in this part to allow either:
 - (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Authority, and this rule, or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service shall be discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Authority prior to any termination

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of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.

- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
 - (a) Non-payment for service by a previous occupant of the premises to be served.
 - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
 - (c) Failure to pay the bill of another customer as guarantor thereof.
 - (d) Failure to pay for a different type or class of public wastewater utility service.
- (4) The public wastewater utility's tariff on file with the Authority shall define all terms and conditions as they relate to denying or discontinuing wastewater service.

Authority: T.C.A. §§ 65-4-102 and 65-4-104

1220-4-13-.13 RECONNECTION

The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority.

Authority: T.C.A. §§ 65-4-102 and 65-4-104

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2005. (09-49)

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THE TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680 CONSTRUCTION DIVISION

There will be a hearing before the Tennessee Department of Transportation to consider the promulgation of new rules governing the prequalification of bidders for construction contracts with the Department of Transportation pursuant to Tennessee Code Annotated § 54-5-117 and § 4-3-2303. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the Auditorium of the Main Administrative Building (Building "A") at the Tennessee Department of Transportation, Region III Office Complex, located at 6601 Centennial Boulevard, Nashville, Tennessee 37243-0360 (take Briley Parkway to Exit 26B, Centennial Boulevard West) at 1:00 p.m. CST on Monday, November 21, 2005.

Written comments will be considered if received by the close of business (4:30 p.m.) on November 21, 2005, in the Office of General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, or if received at the public rulemaking hearing on November 21, 2005.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Department of Transportation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone or other appropriate means, and should be made no less than ten (10) days prior to the public hearing (November 21, 2005) or the date the party intends to review such filings to allow time to provide such aid or service. Such contact may be made with the Department of Transportation's ADA Coordinator at Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0327, or by telephone at (615) 741-4984.

For a copy of this notice of rulemaking hearing, contact: John Reinbold, Tennessee Department of Transportation, Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, telephone number (615) 741-2941.

SUBSTANCE OF PROPOSED RULES

NEW RULES

CHAPTER 1680-5-3 PREQUALIFICATION OF CONTRACTORS

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1680-5-3-.01 AUTHORITY, PURPOSE AND GENERAL REQUIREMENTS.

- (1) Legal Authority. – Section 54-5-117 of the Tennessee Code provides that bidders for construction contracts to be let and awarded by the Tennessee Department of Transportation shall be responsible and qualified under state law and any applicable regulations. It further empowers the Commissioner to adopt such reasonable regulations as the Commissioner deems proper for the qualification of bidders as to financial responsibility, experience, organization and equipment, the number of contracts, the aggregate amount of contract amounts at the contract unit prices, the character of construction, the number of miles of construction each bidder or contractor may have under contract or construction at any given time, and/or any other matter which would in the Commissioner's judgment promote the best interests of the State of Tennessee in its highway construction, with the power to adopt such regulations being expressly not limited to the matters expressly mentioned in the statute.
- (2) Purpose. – The purpose of these rules is to establish procedures and criteria by which the Department determines the responsibility and qualifications of prospective bidders and subcontractors to perform contracts or subcontracts for or related to the construction, improvement and/or maintenance of roads and bridges which are to be let, awarded and administered by the Department. In general, but without limiting any of the following rules, it is the intent of this chapter to govern the prequalification of bidders and subcontractors based on their demonstrated ability, experience and capacity to perform the work required; the quality and timeliness of their past work performance; their financial responsibility; and the integrity of their business practices.
- (3) General Requirements.
 - (a) A prospective bidder or contractor must be prequalified by and in good standing with the Department prior to the issuance of a proposal form.
 - (b) A prospective subcontractor must be prequalified by and in good standing with the Department prior to being approved as a subcontractor.
 - (c) Nothing in this rule shall be construed to prohibit any person from requesting or obtaining a void proposal form for any purpose other than submitting a proposal to the Department.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

1680-5-3-.02 DEFINITIONS.

As used in these rules:

- (1) "Affiliate" means a person that is in affiliation with another person or entity. Persons or entities are affiliates of each other and an affiliation exists if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The factors considered to determine control include, but are not limited to:
 - (a) Interlocking management or ownership;
 - (b) Identity of interests among family members;

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- (c) Shared facilities and equipment;
 - (d) Common use of employees; or
 - (e) A business entity which has been organized following the suspension, debarment or exclusion of a person or entity which has the same or similar management, ownership, or principal employees as the suspended, debarred or excluded person or entity.
- (2) "Applicant" means any individual person, partnership, limited liability company, corporation, or other business entity, acting directly or through a duly authorized representative, that seeks to be prequalified by the Department as a bidder and/or subcontractor.
 - (3) "Award" means the formal acceptance of a proposal by the Department, subject to the Department's reservation of a right to cancel the award of a contract at any time prior to the execution of the contract by all parties.
 - (4) "Bid" means the submission of a proposal to perform road, bridge or related work under a contract to be let by the Department.
 - (5) "Bidder" means any individual person, partnership, limited liability company, corporation or other business entity, acting directly or through a duly authorized representative, that seeks to submit a proposal and enter into a contract to perform work for the Department.
 - (6) "Chief Engineer" means the Chief of the Department's Bureau of Engineering, or any Department employee authorized to act on his/her behalf.
 - (7) "Civil judgment" means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts.
 - (8) "Commissioner" means the Commissioner of the Tennessee Department of Transportation.
 - (9) "Contractor" means a bidder to whom the Department has awarded a contract and with whom the Department has executed and entered into a contract for the performance of work pertaining to the construction, improvement and/or maintenance of roads or bridges.
 - (10) "Conviction" or "convicted" means:
 - (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
 - (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.
 - (11) "Day" means a calendar day; provided, however, that if the last day for completing any action under these rules falls on a Saturday, Sunday or legal holiday, the day for completing the action shall be the following business day.
 - (12) "Department" means the Tennessee Department of Transportation.

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- (13) "Director of Construction" means the Director of the Construction Division of the Tennessee Department of Transportation, or such person as may be authorized to act on behalf of the Director of Construction in the performance of responsibilities under these rules.
- (14) "Enforcement Order" means a final administrative or judicial order, including any order on appeal, which contains a finding of a violation of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, or any other State's water quality control act. The term "enforcement order" does not include administrative notices of violation or equivalent actions that are not subject to appeal.
- (15) "Equipment" means all machinery, apparatus, and tools necessary for the proper construction and acceptable completion of the project, plus the necessary repair parts, tools, and supplies for upkeep and maintenance.
- (16) "General prequalification" means a prequalification to bid on and perform work for the Department as a contractor or subcontractor within approved work classifications that is not limited as to the amount or number of contracts.
- (17) "Limited prequalification" means a prequalification to bid on and perform work for the Department as a contractor or subcontractor within approved work classifications that is limited as to the amount and/or number of contracts.
- (18) "Prequalification" or "prequalified" means the status of having been determined to be responsible and qualified to bid on and perform road or bridge work under a contract or subcontract with the Department.
- (19) "Prequalification application" means the information submitted by an applicant on a completed prequalification questionnaire or other forms developed by the Department and such other information as the Department may require the applicant to provide in order to determine whether the applicant is to be prequalified as a bidder or subcontractor.
- (20) "Prequalification Committee" means the committee of the Department with authority to hear and make a recommendation to the Commissioner for decision on any appeal of a prequalification decision by the Director of Construction as provided in these rules, and whose members may include the following employees of the Department, as determined by the Commissioner:
 - (a) The Chief Engineer, who shall preside over the committee;
 - (b) The Assistant Chief Engineer for Operations;
 - (c) The Chief of Administration;
 - (d) The Transportation Director for any Region of the Department (as selected by the Chief Engineer);
 - (e) The Director of the Civil Rights Division; and/or
 - (f) Other employees of the Department as the Commissioner may from time to time designate.
- (21) "Prequalification Office" means the unit of the Department under the direction of the Director of Construction that is assigned to administer the prequalification program and perform

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responsibilities pertaining to the prequalification of bidders and subcontractors and evaluation of contractors as provided in these rules.

- (22) "Proposal" means the offer of a bidder on a prescribed proposal form to perform work under a contract with the Department at the prices quoted in the proposal form.
- (23) "Proposal form" means the approved form on which the Department requires bidders to submit proposals to the Department.
- (24) "Subcontractor" means any individual person, partnership, limited liability company, corporation, or other business entity, acting directly or through a duly authorized representative, that has entered into a contract with a contractor to perform some part of the work under a contract with the Department; provided, however, that this definition of subcontractor does not include any such person or business entity that only provides or delivers materials to a contractor or subcontractor performing work under a contract with the Department.
- (25) "Surety" means a company authorized to guarantee a bidder's proposal and a contractor's performance and payment obligations under a contract and which is authorized to do business in the State of Tennessee.
- (26) "Work classification" means a category of work pertaining to the construction, improvement and/or maintenance of roads and bridges, or related work, as the Department may identify such categories of work in the prequalification questionnaire or other prequalification forms developed by the Prequalification Office.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

1680-5-3-.03 PREQUALIFICATION OFFICE.

- (1) Duties. – The Prequalification Office shall have the primary responsibility for administering the Department's prequalification program. The duties of the Prequalification Office shall include the development of a prequalification questionnaire and other prequalification forms; the designation of work classifications; the development and administration of a contractor performance evaluation program; the review and evaluation of prequalification applications; the determination of an applicant's prequalification status; the modification, revocation or temporary disqualification of a bidder's or subcontractor's prequalification status; and the performance of such other responsibilities pertaining to the prequalification of bidders and subcontractors as the Department may determine.
- (2) Composition. – The Prequalification Office shall consist of the Director of Construction and such other employees of the Department as the Director of Construction may direct or request to assist in the administration of the prequalification program. The Director of Construction shall oversee the Prequalification Office.
- (3) Audits and Investigations. – The Prequalification Office may perform or request other employees of the Department to perform audits or investigations concerning any information required or requested of or submitted by any applicant for prequalification or any other matter within the scope of these rules.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

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1680-5-3-.04 APPLICATION FOR PREQUALIFICATION.

(1) General Information and Requirements.

- (a) To apply for prequalification, an applicant must submit a prequalification application to the Prequalification Office at the following address:

Tennessee Department of Transportation
Construction Division, Prequalification Office
Suite 700, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243

The prequalification application must be hand delivered to the Prequalification Office or mailed by certified, overnight or other mailing whereby the date of receipt can be verified by the Department. The mailing address of the Prequalification Office may be subject to change without amendment of these rules.

- (b) The prequalification application shall include, without limitation, a completed prequalification questionnaire and other forms or information that may be developed or requested by the Prequalification Office. The prequalification questionnaire or other forms may be requested by contacting the Prequalification Office in writing at the address indicated above, by telephone at (615) 741-2414, or via the Construction Division's website at www.tdot.state.tn.us/construction. The website address of the Construction Division may be subject to change without amendment of these rules.
- (c) The prequalification application must be signed by an owner, partner, officer, or other authorized representative of the applicant having authority to sign contracts or other legal documents on behalf of the applicant. Such person shall certify the accuracy of the information provided in the prequalification application, and the signature of such person shall be notarized.
- (d) The same prequalification questionnaire or other forms must be completed whether an applicant wishes to be prequalified as a bidder or as a subcontractor or both.
- (e) As received in the ordinary course of business, a prequalification application will not be considered confidential.

(2) Information Required in the Prequalification Application.

An applicant's prequalification application shall provide the following information, at a minimum, and such additional information as the Prequalification Office may require:

- (a) Name, Contact Information, and Business Organization. – The application shall identify the applicant's full legal name; the applicant's business address, telephone number, facsimile number, and electronic mail address, if available, and the application shall identify the legal form of the applicant's business organization, e.g., whether the applicant is a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a corporation, or some other form of organization.
- (b) Partners, Owners, Officers, and Authorized Representatives. – The application shall identify:

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1. The names and addresses of each individual person or business entity that is a partner or owns ten percent (10%) or more of the applicant, including any partner or owner that is acting under an assumed name;
 2. The names and addresses of all officers of the applicant, if applicable; and
 3. The names and addresses of all persons who are authorized to act on behalf of the applicant to sign proposals and contracts with the Department.
- (c) Affiliations. – The application shall identify:
1. The names and addresses of all affiliates of the applicant; and
 2. For each partner, owner, officer, and authorized representative identified in accordance with subparagraph (b) above, the application shall identify whether such partner, owner, officer, or authorized representative owns ten percent (10%) or more, or is a partner, officer, or authorized representative, of any other firm that has been prequalified or is an applicant for prequalification by the Department, and if so the nature of such ownership or interest in the other firm or firms shall be described.
- (d) Business Relationships of Immediate Family Members. – For each partner, owner, officer, and authorized representative identified in accordance with subparagraph (b) above, the application shall identify whether any immediate family member of such partner, owner, officer, or authorized representative owns ten percent (10%) or more, or is a partner, officer, or authorized representative, of any other firm that has been prequalified or is an applicant for prequalification by the Department, and if so the nature of such ownership or interest in the other firm or firms shall be described. For the purposes of this subparagraph, the term “immediate family member” means a spouse, mother, father, son, daughter, brother, or sister (including step, half, and adoptive relationships).
- (e) Applicant’s Fiscal Year. – The application shall identify the beginning and ending dates for the applicant’s fiscal year.
- (f) Type of Prequalification Requested. – The application shall identify whether the applicant is seeking a general or limited prequalification.
- (g) Work Classifications. – The application shall identify the work classification(s), as defined in the prequalification questionnaire or other prequalification forms developed by the Prequalification Office, for which the applicant seeks to be prequalified by the Department.
- (h) Work Experience. – The application shall furnish information regarding:
1. The applicant’s experience as a firm in performing work within the work classification(s) for which the applicant seeks prequalification, including, without limitation, identification of the project; the owner of the project; the type of work performed, whether as the contractor or a subcontractor; the amount of the contract; whether the contract was completed on time; whether the contract was terminated for cause; whether liquidated damages or disincentives were assessed against the applicant under the contract; and any other information concerning the work experience of the applicant that the Prequalification Office may require;

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2. The work experience of the applicant's key administrative and supervisory personnel, including employees who will provide field supervision of the work, in the work classification(s) for which the applicant seeks prequalification from the Department, if requested by the Prequalification Office; and
 3. References, if requested by the Prequalification Office.
- (i) Equipment. – The application shall identify equipment that the applicant has available to perform the work required in the work classification(s) for which the applicant seeks prequalification. The applicant shall indicate whether the equipment is owned, leased, or otherwise accessible, and if not owned the applicant shall identify the owner or source of the equipment, including whether the owner or source of the equipment is a firm that has been prequalified or is an applicant for prequalification by the Department.
- (j) Surety; Bonding Capacity. – The application shall identify any surety company, and the local agent thereof, if applicable, that the applicant may use as a surety for the performance of any contract with the Department. The Prequalification Office may require the applicant to document its maximum current or potential bonding capacity.
- (k) Financial Responsibility.
1. With respect to:
 - (i) The applicant,
 - (ii) Any affiliate of the applicant (as identified in accordance with subparagraph (c) above), or
 - (iii) Any business firm (whether or not such firm has been prequalified or is seeking prequalification by the Department) in which a partner, owner, officer, or authorized representative of the applicant (as identified in accordance with subparagraph (b) above) is or was a partner, owner (of at least a 10% interest), officer, or authorized representative,
 2. The application shall state whether the applicant, affiliate, or such business firm has within the past five (5) years:
 - (i) Filed for bankruptcy;
 - (ii) Defaulted on or failed to complete any public contract or had such contract terminated for cause;
 - (iii) Had a surety take over payment or performance obligations of any public contract; or
 - (iv) Had any liens, claims or stop work orders filed against it on any public contract.
- (l) Suspension, Debarment or Other Exclusion; Criminal Convictions, Civil Judgments, and Enforcement Orders. – The application shall state whether the applicant, any affiliate of the applicant identified in accordance with subparagraph (c) above, or any partner, owner, officer, or authorized representative of the applicant identified in accordance with subparagraph (b) above is currently or within the past five (5) years has been:

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1. Denied prequalification and/or suspended, debarred or otherwise excluded from bidding on or participating in any public contract by the Department or other agency of the State of Tennessee, by any agency of the United States Government, or by any agency of any other state or any local government;
 2. Convicted of or held liable in a civil judgment for:
 - (i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - (ii) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
 - (iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
 - (iv) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects such person's or entity's present responsibility;
 1. Convicted of any criminal violation of the Federal Water Pollution Control Act, as provided in 33 U.S.C. § 1319(c), or as it may be amended; convicted of any criminal violation of the Tennessee Water Quality Control Act, as provided in T.C.A. §§ 69-3-115(b) and (c), or as either may be amended; or convicted of any criminal violation of any other state's water quality or water pollution control act; and/or
 2. Received an enforcement order finding a violation of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, or any other state's water quality control act.
- (m) Additional Information; Examination of Records and Accounts. – The Department reserves the right to request additional information to clarify and/or verify any information submitted in an applicant's prequalification application and to examine the applicant's records and accounts. The applicant shall be deemed to have consented to the Department's right to examine its records and accounts by submitting a prequalification application to the Department.
- (3) Submission of Prequalification Application – Timing and Effect.
- (e) The prequalification application must be submitted to and received by the Prequalification Office at least twenty-one (21) days prior to:
1. The date for opening bids for any project on which the applicant wishes to submit a proposal to the Department, if the applicant is seeking to be prequalified as a bidder; or
 2. The date on which the applicant requests approval as a subcontractor under any contract awarded by the Department, if the applicant is seeking to become prequalified as a subcontractor.

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- (f) The act of submitting a prequalification application with the Department does not authorize the applicant to submit a bid or begin work as a contractor or subcontractor. It is the responsibility of the applicant to become prequalified before obtaining a proposal form to bid on a project or requesting to be approved by the Department as a subcontractor. The Department reserves the right to deny a prequalification application or return the prequalification application and postpone a determination of prequalification status until all required or requested information has been received and evaluated.
- (4) Requirements for Reporting Changes in Prequalification Application.
 - (a) A prequalified bidder or subcontractor shall promptly notify the Prequalification Office of any material change in the information provided to the Department with the applicant's prequalification application.
 - (b) For the purposes of reporting changes under this paragraph, a material change in the applicant's prequalification application includes, at a minimum, any change in the information provided under paragraph (2) of this rule.
 - (c) Failure to notify the Prequalification Office of any material change in the applicant's prequalification application information at least twenty-one (21) days prior to any bid letting or request for approval as a subcontractor, as applicable, may result in the temporary disqualification of a prequalified bidder or subcontractor and/or such further action as the Department may deem appropriate in accordance with these rules.

Authority: T.C.A. §§ 54-5-117 and 4-3-2303.

1680-5-3-.05 DETERMINATION OF PREQUALIFICATION STATUS.

- (1) Review of Applications.
 - (a) All applications for prequalification, including applications for the renewal of prequalification, shall be submitted to the Prequalification Office as provided in Rule 1680-5-3-.04 above.
 - (b) The Prequalification Office will review each prequalification application for completeness. Incomplete applications will be returned to the applicant for additional information without a determination of the applicant's prequalification status.
 - (c) The Prequalification Office will review each completed prequalification application and such additional information as the Prequalification Office may require for the purpose of evaluating whether the applicant is responsible and qualified to perform the work classification(s) for which the applicant seeks prequalification. The evaluation will be made in consideration of:
 - 1. The amount, variety and quality of the applicant's prior work experience, including the prior work experience of the applicant's key personnel, if requested;
 - 2. The availability to the applicant of the equipment needed to perform the work required in such work classification(s);
 - 3. The Department's performance evaluations of the applicant, if available;

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4. The financial responsibility of the applicant, the applicant's affiliates, and any business firms with which any partner, owner, officer, or authorized representative is or has been associated;
5. The business integrity and responsibility of the applicant, the applicant's affiliates, and any partner, owner, officer, or authorized representative of the applicant;
6. The environmental record of the applicant, the applicant's affiliates, and any partner, owner, officer, or authorized representative of the applicant;
7. The completeness and accuracy of the applicant's prequalification application; and
8. Any other information the Prequalification Office may have requested, received or examined with respect to the applicant's responsibility and qualifications.

(2) Determination of Prequalification Status.

Based on the Prequalification Office's review and evaluation of the applicant's prequalification application, the Director of Construction shall either:

- (a) Deny the applicant's request for prequalification in any or all of the work classification(s) for which the applicant seeks to be prequalified, or
- (b) Approve the applicant's request for prequalification in any or all of the work classification(s) for which the applicant seeks to be prequalified. An approved prequalification may be either general or limited, as follows:
 1. General Prequalification. – An applicant that obtains an approved general prequalification will be eligible to submit a proposal for contract and perform work as a contractor or subcontractor under any Department contract pertaining to the construction, improvement and/or maintenance of roads and bridges that is within the applicant's approved work classification(s).
 2. Limited Prequalification. – Based on an applicant's request and/or limitations in an applicant's work experience, equipment, prior work performance, financial responsibility and/or other factors evaluated by the Prequalification Office, the Director of Construction may approve only a limited prequalification. An applicant that obtains an approved limited prequalification will be eligible to submit a proposal for contract only up to a maximum bid amount and/or the applicant may be restricted in the number and/or aggregate amount of Department contracts it will be eligible to perform as a contractor at any given time, as determined by the Director of Construction.
 3. Waiver. – The Director of Construction may waive any restriction(s) established in a limited prequalification on a project-by-project basis. A request for waiver of a limited prequalification must be submitted to the Director of Construction at least fourteen (14) days prior to the date for opening bids for any project on which the applicant wishes to submit a proposal to the Department. Denial of a request for a waiver is not appealable under this chapter.

(3) Reservations. – Notwithstanding the foregoing or any other provision of this chapter, the Department reserves the right:

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- (a) To modify, revoke or restrict a general or limited prequalification or temporarily disqualify a prequalified bidder or subcontractor, as provided in these rules;
 - (b) To suspend, debar or otherwise exclude a prequalified bidder, contractor or subcontractor, as provided in the Department's rules governing contractor debarment and suspension, Chapter 1680-5-1, which shall not be appealable under this chapter; and/or
 - (c) To establish more restrictive special prequalification requirements in the proposal form for a particular project, which shall not be appealable under this chapter;
- (4) Notice of Prequalification Status.
- (a) A decision to deny prequalification or to limit an applicant's prequalification status shall be delivered to the applicant in a written notice signed by the Director of Construction. The written notice shall document the reason(s) for denying a prequalification request in whole or part and/or the reason(s) for issuing a limited prequalification instead of a general prequalification.
 - (b) Delivery of the written notice may be made in the original via certified or overnight mail or hand delivery, or delivery may be made by copy sent via facsimile or electronic mail, if available (in which case the original may also be sent by regular mail). The notice will be deemed to have been received by the applicant as of the date the notice is delivered to the applicant's place of business by any one of these methods, whichever is earliest.
 - (c) All approved prequalifications will be posted on the Construction Division's website at www.tdot.state.tn.us/construction. The website address of the Construction Division may be subject to change without amendment of these rules.
- (5) Appeals. – The determination of an applicant's prequalification status may be appealed to the Commissioner by following the appeal procedure established in Rule 1680-5-3-.08 below.

Authority: T.C.A. §§ 54-5-117 and 4-3-2303.

1680-5-3-.06 EFFECTIVE TERM AND RENEWAL OF PREQUALIFICATION.

- (1) Effective Term.
- (a) A prequalification approved under these rules shall be effective for twelve (12) months from the end of the applicant's preceding fiscal year.
 - (b) Any prequalification approved prior to the effective date of these rules shall remain in effect until the expiration date indicated on such prequalification.
 - (c) A prequalified bidder or subcontractor will have a three-month grace period after the expiration date for its existing prequalification within which to apply for renewal of its prequalification. The existing prequalification will remain in effect during this grace period, subject to the reservations in paragraph (3) of this rule below.
- (2) Renewal of Prequalification.

A prequalified bidder or subcontractor may request the renewal of its prequalification for an additional term by submitting a prequalification application to the Prequalification Office as

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provided in Rule 1680-5-3-.04 above. The determination of the applicant's prequalification status upon renewal shall be made as provided in Rule 1680-5-3-.05 above.

- (3) **Reservations.** – Notwithstanding the foregoing or any other provision of this chapter, the Department reserves the right to modify, revoke or restrict a general or limited prequalification or to temporarily disqualify a prequalified bidder or subcontractor, as provided in these rules. The Department also reserves the right to establish more restrictive special prequalifications for any particular project and/or the right to suspend, debar or otherwise exclude a prequalified bidder, contractor or subcontractor, as provided in the Department's rules governing contractor debarment and suspension, Chapter 1680-5-1, and any such decision shall not be appealable under this chapter.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

1680-5-3-.07 MODIFICATION, REVOCATION AND DISQUALIFICATION.

- (1) **Authority of Director of Construction.** – For good cause, the Director Construction may modify, revoke or restrict a general or limited prequalification, or the Director of Construction may temporarily disqualify a prequalified bidder or subcontractor, as follows:
 - (a) Upon the request of an applicant and additional information received, the Director of Construction may modify a prequalification to make it less restrictive by, for example, changing a limited to a general prequalification, changing the restrictions of a limited prequalification, or adding a work classification. The Director may require an applicant to complete and submit a new prequalification application in support of a request for modification of an existing prequalification.
 - (b) The Director of Construction may revoke or restrict a prequalification by, for example, terminating a general or limited prequalification in any particular work classification(s), changing a general prequalification to a limited prequalification, or imposing additional restrictions on a limited prequalification in any particular work classification(s).
 - (c) The Director of Construction may temporarily disqualify a prequalified bidder or subcontractor by suspending the privilege of bidding on Department contracts or becoming an approved subcontractor until the conditions resulting in the temporary disqualification have been remedied, as determined by the Director of Construction.
- (2) **Factors to Consider.** – In making a decision to modify, revoke or restrict a prequalification or temporarily disqualify a prequalified bidder or subcontractor (hereinafter referred to as the "applicant"), the Director of Construction may consider any of the following facts or information:
 - (a) The Department's performance evaluations of the applicant, if available;
 - (b) Any change in the applicant's or any affiliate's prequalification information (as is required to be reported under Rule 1680-5-3-.04 above) that pertains to the applicant's or any affiliate's qualifications or responsibility, including without limitation any change in the firm's work experience, key personnel, available equipment, environmental record, financial responsibility, or business integrity;
 - (c) The applicant or any affiliate has made false, deceptive or fraudulent statements in its prequalification application;

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- (d) The applicant or any affiliate has failed to complete, defaulted on or had any contract with the Department terminated for cause;
 - (e) The applicant or any affiliate has existing incomplete contracts with the Department on which it is behind schedule to such an extent that it might hinder or prevent prompt completion of any additional contracts with the Department;
 - (f) The applicant or any affiliate has a record of defective workmanship or the use of improper materials on any contract or subcontract with the Department;
 - (g) The applicant or any affiliate has a record of non-compliance with other Department contract requirements, including without limitation the submittal of required documents;
 - (h) The applicant or any affiliate has a record of non-compliance with applicable federal, state or local laws, regulations or ordinances, including without limitation laws, regulations or ordinances relating to workplace safety, environmental protection, equal opportunity employment and contracting, disadvantaged business enterprise program requirements, employee wage and hour requirements, or the prompt payment of subcontractors;
 - (i) The applicant or any of its affiliates owes money to the Department; and/or
 - (j) Any other information the Prequalification Office may have requested, received or examined with respect to the applicant's responsibility and qualifications.
- (3) Notice. – Notice of any modification, revocation, restriction or temporary disqualification shall be provided in writing in the same manner as notice of a denial or limitation of prequalification status under Rule 1680-5-3-.05 above.
- (4) Appeal. – A prequalified bidder or subcontractor who has been temporarily disqualified or who has had its prequalification status modified, revoked or restricted may appeal such decision to the Commissioner by following the appeal procedure established in Rule 1680-5-3-.08 below.
- (5) Reservations. – Notwithstanding the foregoing or any other provision of this chapter, the Department reserves the right to establish more restrictive special prequalifications for any particular project and/or the right to suspend, debar or otherwise exclude a prequalified bidder, contractor or subcontractor, as provided in the Department's rules governing contractor debarment and suspension, Chapter 1680-5-1, and any such decision shall not be appealable under this chapter.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

1680-5-2-.08 APPEALS.

- (1) Grounds for Appeal. – In accordance with these rules, an applicant for prequalification or a prequalified bidder or subcontractor whose prequalification status has been adversely affected may appeal any decision by the Director of Construction that:
- (a) Determines the applicant's prequalification status, as provided in Rule 1680-5-3-.05;
 - (b) Modifies, revokes or restricts an existing prequalification held by the prequalified bidder or subcontractor, as provided in Rule 1680-5-3-.07;

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- (c) Temporarily disqualifies a prequalified bidder or subcontractor, as provided in Rule 1680-5-3-.07; or
 - (d) Is otherwise expressly appealable under these rules.
- (2) Filing of Appeal; Timing and Content.
- (a) A request for appeal under these rules must be filed with and received by the Director of Construction, with a copy to the Chief Engineer, no later than fourteen (14) days after delivery to the applicant or prequalified bidder or subcontractor of the adverse decision being appealed. For good cause shown, the Director of Construction may grant a written request for an extension of time, not to exceed an additional fourteen (14) days, within which to file the appeal.
 - (b) Failure to file a request for appeal within the time allowed will result in a denial of the appeal without any hearing.
 - (c) The appeal shall be in writing and shall contain:
 - 1. A detailed statement of the reasons why the appellant believes the Director of Construction's decision was erroneous, improper and/or not in the best interest of the Department;
 - 2. A statement of the relief requested (i.e., a statement of the decision the appellant believes the Commissioner should make on appeal); and
 - 3. Any documentation of evidence that the appellant reasonably believes will support its appeal.
- (3) Informal Hearing Before the Prequalification Committee.
- (a) Upon receiving a request for appeal as provided in the paragraph above, the Director of Construction will promptly notify the Chief Engineer, who shall schedule an informal hearing before the Prequalification Committee.
 - (b) The hearing should, if possible, be scheduled to occur within thirty (30) days after the date on which the appeal was filed. The Chief Engineer shall notify the appellant of the date, time and place for the hearing. For good cause shown, the Chief Engineer may allow for a continuance of the hearing to a later date.
 - (c) For good cause shown, the Chief Engineer may, but is not required to, stay the decision of the Director of Construction that is the subject of the appeal if:
 - 1. The decision was to revoke or restrict an existing prequalification or to temporarily disqualify a prequalified bidder or subcontractor; and
 - 2. The Chief Engineer determines that it is in the public interest to preserve the status quo pending a hearing and decision on the appeal.
 - (d) The hearing before the Prequalification Committee shall be held at the time and place set by the Chief Engineer, and the Chief Engineer shall preside. A quorum of the Prequalification Committee, consisting of a majority of the members of the Committee, shall be sufficient to conduct the hearing.

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- (e) The hearing will be conducted in an informal manner. A court reporter will be present to create a record of the proceedings, but the Committee may use flexible procedures to hear evidence and argument presented by the appellant and the Prequalification Office. Formal rules of evidence and civil procedure will not be required. At the discretion of the Chief Engineer, the Committee may hear statements from and question witnesses at the hearing and/or take written statements, and the Committee may consider relevant written documentation that the appellant or the Prequalification Office may wish to present. The Chief Engineer may continue the hearing and reconvene the Prequalification Committee at a later date, if necessary for a full and fair consideration of the appeal.
- (4) Commissioner's Decision. – Upon consideration of the evidence and argument presented at the informal hearing, the Prequalification Committee shall advise the Commissioner and make recommendations for his/her decision, but the decision shall be the Commissioner's alone. The Commissioner shall give the appellant written notice of the decision, and the reasons therefore, within thirty (30) days after the close of the Prequalification Committee's informal hearing, unless the time is extended by the Commissioner for good cause. Notice of the decision may be sent by regular mail or other reliable means of delivery. The Commissioner's decision shall be final and not subject to any further administrative appeal.
- (5) Reservation. – The informal appeal procedure established herein and other proceedings established in these rules are not, nor are they required to be conducted as, contested case proceedings under Tennessee Code Annotated § 4-5-102(3). It is the intent of these rules, consistent with considerations of fundamental fairness, to provide for the just, speedy and inexpensive determination of matters before the Prequalification Office, the Prequalification Committee, and the Commissioner. The procedures established in these rules are subject to amendment as the Commissioner may determine to be in the best interest of the Department, and nothing in these rules shall be construed to create any vested right to any particular process established herein.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

1680-5-3-.09 SPECIAL PREQUALIFICATION REQUIREMENTS.

- (1) Reservation of Right to Establish Special Prequalification Requirements. – Notwithstanding any other provision in this chapter, the Department reserves the right to establish special or additional prequalification requirements for bidders and/or subcontractors on a project-by-project basis whenever, in the judgment of the Department, such special or additional prequalification requirements are in the best interest of the Department because of the project's size, scope, schedule, complexity, environmental sensitivity or any other special circumstance related to the project.
- (2) Notice. – The Department will give notice of any special prequalification requirements and procedures for bidders and/or subcontractors prior to the issuance of the proposal form for the project. Notice shall be given by publication in appropriate newspapers and/or publication on the Construction Division's website, as the Department may determine.
- (3) Rejection of Ineligible or Non-Responsive Bidders or Subcontractors. – The Department reserves the right to refuse to issue a proposal form to any bidder, reject the proposal of any bidder, and/or decline to approve any subcontractor that does not, in the judgment of the Department, meet the special prequalification requirements.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

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1680-5-3-.10 BIDDING.

In addition to any other provisions pertaining to the submission, opening and acceptance or rejection of bids that are contained in the Department's Standard Specifications for Road and Bridge Construction (and as amended or supplemented), the following bidding requirements are established in these prequalification rules.

- (1) Bidding Procedure.
 - (a) To bid on any project advertised by the Department, the bidder must be prequalified in the work classification(s) as identified in the advertisement for the project.
 - (b) If the work of a project is not among the work classifications previously identified by the Prequalification Office in the prequalification questionnaire or other forms completed by applicants for prequalification, the Department's advertisement may solicit applications for prequalification in one or more new or project-specific work classifications, or the Department may waive prequalification requirements in whole or part.
 - (c) Unless suspended, debarred or otherwise excluded from participation in Department contracts, a prequalified bidder may request a proposal form or other bidding documents from the Department at any time prior to the opening of bids for the project on which the bidder may be interested in submitting a proposal.
- (2) Joint Ventures.
 - (a) When two or more bidders wish to bid together as a joint venture, each bidder wishing to participate in the joint venture must make a separate written request to the Prequalification Office to request approval of the joint venture. Each request must be signed by an authorized representative of each respective firm.
 - (b) Each bidder participating in a joint venture must be separately prequalified by the Department.
 - (c) At least one of the bidders participating in a joint venture must be prequalified in the work classification(s) applicable to the project.
- (3) Affiliates. – Affiliates of a bidder are prohibited from submitting separate proposals for contract on the same Department project. The Department will not issue a proposal form to more than one affiliated party on the same project.
- (4) Reservation of Right to Reject Bids or Cancel Awards. – In addition to any provision regarding the rejection of bids or cancellation of awards in the Department's Standard Specifications for Road and Bridge Construction (and as amended or supplemented), the Department reserves the right to reject the bid of any bidder or to cancel the award of a contract to any bidder:
 - (a) Who is not prequalified in the applicable work classification(s) for the project, or whose bid exceeds the limitations of a limited prequalification;
 - (b) Who is the affiliate of any other bidder on the same project, as determined by the Prequalification Office;
 - (c) Who has been temporarily disqualified or has had its prequalification revoked as provided in these rules; or

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- (d) Who has been suspended, debarred, or otherwise excluded under the Department's rules governing contractor debarment and suspension, Chapter 1680-5-1, or under applicable Federal rules governing the suspension and debarment of contractors.

Authority: *T.C.A. §§ 54-5-117 and 4-3-2303.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2005. (09-39)



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 September 1, 2005 and ending September 30, 2005.

RILEY C. DARNELL
Secretary of State