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# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Underground Storage Tanks
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0400-18-01	Underground Storage Tank Program
Rule Number	Rule Title
0400-18-01-.01	Program Scope, Definitions and Proprietary Information
0400-18-01-.16	Certified Operator Program

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0400-18-01  
Underground Storage Tank Program

Amendments

Subparagraph (b) of paragraph (2) of Rule 0400-18-01-.01 Program Scope, Definitions and Proprietary Information is amended by deleting it in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

(b) Deferrals.

Rules 0400-18-01-.02 through 0400-18-01-.05 and 0400-18-01-.07 through 0400-18-01-.10 and 0400-18-01-.16 do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;
2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;
4. Airport hydrant fuel distribution systems;
5. UST systems with field-constructed tanks;
6. Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
7. Any UST system whose capacity is 110 gallons or less;
8. Any UST system that contains a de minimis concentration of petroleum; or
9. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

Paragraph (4) of Rule 0400-18-01-.01 Program Scope, Definitions and Proprietary Information is amended by adding in alphabetical order the new definition for "unmanned facilities" to read as follows:

"Unmanned facility" means an unattended emergency generator or a facility that dispenses fuel without the presence of an attendant who monitors the pumps, such as card lock fleet facilities or an unattended service station.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

Rule 0400-18-01-.16 Certified Operator Program is deleted in its entirety and replaced with the following as that, as amended, the rule shall read as follows:

0400-18-01-.16 Certified Operator Program.

(1) Operator Designation Requirements.

- (a) Effective August 8, 2012 every facility having one or more petroleum UST systems subject to the requirements of Chapter 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operator(s).

- (b) A Class A, Class B, or Class C Operator is not necessarily considered the same as "operator" defined in paragraph (4) of Rule 0400-18-01-.01, although the same individual may hold both positions.
- (c) A Class A, Class B, or Class C Operator is not necessarily the same as "owner" as defined in paragraph (4) of Rule 0400-18-01-.01, unless such a person also owns these petroleum underground storage tanks.

(2) Operator Training Requirements

- (a) Persons to be classified as Class A, Class B, or Class C Operators must log on to the division's web based training database and indicate how operator training requirements are met for each applicable classification by indicating successful completion of at least one of the following:
  1. Applicable portions of the division's web-based operator training program designed to meet Class A, Class B, and/or Class C Operator training requirements, or
  2. Obtaining a passing score on the applicable UST System Operator Examination administered by the International Code Council and submitting the records to the division every two years, or
  3. Obtaining a passing score on a UST operator training program examination administered by the division.
- (b) Class C Operator training may be provided by the tank owner, a trained Class A or Class B Operator in accordance with guidance published by the division, or by successful completion of Class C Operator training using the division's web-based operator training program.
- (c) Class C Operators must be trained before assuming responsibility for responding to emergencies.

(3) Tank Owner Responsibilities.

- (a) Tank owners must register a Class A, and Class B Operator(s) for each facility where petroleum UST systems are located using the division's web-based operator training database on or before August 8, 2012.
- (b) Tank owners must verify in the division's web-based operator training database that a trained individual meeting the requirements for a Class C Operator will be on site whenever the facility is operating.
- (c) If a UST facility has a person(s) on site, at least one person on site must be a Class C Operator whenever the facility is operating. No later than August 8, 2012 a sign or instruction manual must be placed where the Class C operator would be expected to see it during the normal course of their work. At a minimum, it must include the following:
  1. Employee's role in responding to spills and overfills, and
  2. Procedures for handling warnings, alarms, and response from leak detection console (if applicable), and
  3. Name and number of contact person for emergencies and monitoring equipment alarms, and
  4. Local emergency numbers, and
  5. An instruction to maintain a safe distance from any potential hazards.
- (d) Unmanned facilities as defined in paragraph (4) of Rule 0400-18-01-.01, must have a designated Class A and Class B Operator, but are not required to have designated operators on site. Class C operator requirements for unmanned facilities may be met by the designated Class B Operator

who is also trained as the designated Class C Operator. The designated Class B/C Operator must respond to all emergencies and alarms caused by spills or releases from the underground storage tank facility.

- (e) A facility that is unmanned part of the time will be required to follow subparagraph (c) of this paragraph during the times the facility is manned and subparagraph (d) of this paragraph during the time the facility is unmanned.
- (f) Tank owners may elect to replace Class A or Class B Operators at any time by providing proper notice to the division in accordance with subparagraph (1)(h) of Rule 0400-18-01-.03. Notice to the division is not required when replacing a designated Class C Operator.
- (g) It will be unlawful to operate a petroleum UST facility without a Class A, Class B, and Class C Operator designations after August 8, 2012.

(4) Retraining

If a significant operational compliance violation is discovered at any time, then successful completion of operator retraining appropriate to the level of the operator Class must be completed within a time frame determined by the division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mayor Allen Barker				X	
Jonathan M. Edwards	✓				
John C. Harding	✓				
Sharon O. Jacobs	✓				
Bhag Kanwar	✓				
John Owsley	✓				
DeAnne Redman	✓				
Larry R. Reynolds	✓				
Jon Roach	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Petroleum Underground Storage Tank Board on 04/25/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/19/12

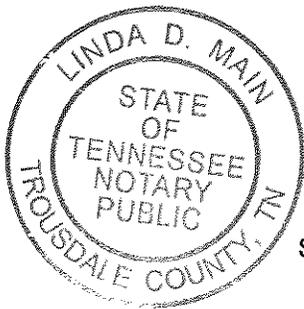
Rulemaking Hearing(s) Conducted on: (add more dates). 03/13/12

Date: 4-25-2012

Signature: Jonathan M. Edwards

Name of Officer: Jonathan M. Edwards

Title of Officer: Chair



Subscribed and sworn to before me on: 4-25-12

Notary Public Signature: Linda D. Main

My commission expires on: 3-25-14

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

Robert E. Cooper, Jr.  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter

6-27-12  
 Date

Department of State Use Only

Filed with the Department of State on: 6/28/12

Effective on: 9/26/12



Tre Hargett  
Secretary of State

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SECRETARY OF STATE

## Public Hearing Comments

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

Comment: A commenter felt that an exemption should be made for temporarily out of service tanks.

Response: The Board maintains that because the EPA guidelines and the pending federal rules require that temporarily out of service tanks to have certified A and B operators, that the state can be no less stringent. Therefore, no change should be made.

Comment: A commenter wanted a definition of what constituted an emergency and what constituted a safe distance in Rule 0400-18-01-.16(3)(c).

Response: The Board maintains that those decisions should be left up to the tank owner and therefore no change should be made to the rule.

Comment: A commenter wanted to clarify that a tank owner who had a manual inside but no signs, would meet the requirements under the rule.

Response: The Board maintains that since the rule state they must have either a manual or a sign, that the rule is clear and no changes are required.

Comment: A commenter wanted clarification that the under Rule 0400-18-01-.16(3)(d), that the A or B operator that was to be called in the event of an emergency did not need to be the first call. For example, if a tank owner had a manual at the site and the manual said to call the supervisor and the supervisor called the certified A or B operator, did that meet the requirements of the rule.

Response: The Board maintains that the rule states that an A or B operator is to be called and does not specify that they have to be the first person called. Therefore, no change is required.

### Regulatory Flexibility Addendum

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

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

These are minor changes to existing rules and should have no impact on small businesses.

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

These are minor changes to existing rules and should have no reporting, recordkeeping, or other administrative costs.

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

These are minor changes to existing rules and there should not be any effect on small businesses and consumers.

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

These are minor rules changes that make the existing rule less burdensome and have no additional cost to the current rules.

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

The rule matches the pending federal rules and the federal guidance provided to the states by the federal government.

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

These are minor rule changes to existing rules and exempting small businesses would have no effect.

### **Impact on Local Governments**

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

The Department anticipates that these amended rules will not have a financial impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

These are minor changes to an existing rule to clarify, at the request of the regulated community, the regulatory applicability of the certified operator program to an unmanned facility and for a class C operator.

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

This amendment is promulgated under the authority of T.C.A. §§ 68-215-101 et seq. -- Tennessee Petroleum Underground Storage Tank Act, as amended by the 2008 UST Act.

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

Owners and operators of petroleum underground storage tanks are directly affected by these amendments. This amendment is intended to clarify the applicability of the certified operator program to unmanned facilities and for class C operators. These clarifications were requested by the regulated community.

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

The Petroleum Underground Storage Tank Board is not aware of any.

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

There will be no increase or decrease of revenues resulting from this rulemaking.

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

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4<sup>th</sup> Floor, L & C Tower  
401 Church Street  
Nashville, Tennessee 37243-1541

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

Alan Leiserson  
Legal Services Director  
Department of Environment and Conservation

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

Office of General Counsel  
Tennessee Department of Environment and Conservation  
20<sup>th</sup> Floor, L&C Tower  
Nashville, Tennessee 37243-1548

Phone: (615) 532-0131  
Alan.Leiserson@tn.gov

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

The Petroleum Underground Storage Tank Board is not aware of any.