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For Department of State Use Only

Sequence Number: 11-04-10
 Rule ID(s): 4857
 File Date: 11/04/2016
 Effective Date: ~~02/02/2011~~

03/31/2011

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Underground Storage Tanks
Contact Person:	Rhonda Key
Address:	4 th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1541
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Email:	<u>Rhonda.Key@tn.gov</u>

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
1200-01-15	Underground Storage Tank Program
Rule Number	Rule Title
1200-01-15-.01	Program Scope, Definitions and Proprietary Information
1200-01-15-.03	Notification, Reporting and Record Keeping
1200-01-15-.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 1200-01-15
Underground Storage Tank Program

Amendments

The Table of Contents for Chapter 1200-01-15 Underground Storage Tank Program is amended by adding a new rule and title so that the Table of Contents shall include 1200-01-15-.16 Certified Operator Program in the proper order.

Paragraph (4) Definitions of rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is amended by adding new definitions for the terms "Class A Operator", "Class B Operator", "Class C Operator", "Facility is operating", "Operator Training", "Retraining", and "UST facility" and inserted in alphabetical order, which shall read as follows:

"Class A Operator" means any person having primary responsibility for on-site operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 1200-01-15-.16.

"Class B Operator" means any person having daily on-site responsibility for the operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 1200-01-15-.16.

"Class C Operator" means any on-site employee having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 1200-01-15-.16.

"Facility is operating", for purposes of rule 1200-01-15-.16, means normal or extended business hours when product can be dispensed from UST systems. This does not include periods when a facility is closed for business, nor when a facility is closed, but deliveries can be made to UST systems.

"Operator Training", for purposes of rule 1200-01-15-.16, means a program recognized by the Division as meeting the specific requirements for each operator class as published by EPA in the Final Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act Of 2005, August, 2007.

"Retraining" means any remedial training approach imposed by the Division when significant operational compliance violations are discovered at a facility. Retraining may be directed to any or all operator classes assigned to a facility and may include requirements to successfully complete additional education, testing, and/or training, or be subject to other administrative or enforcement options at the discretion of the Division.

"UST facility" means any location at which one or more regulated underground storage tank systems are located.

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

Paragraph (1) of Rule 1200-01-15-.03 Notification, Reporting and Recordkeeping is amended by adding a new paragraph so that the new paragraph shall read as follows:

- (h) Any change in Class A, or Class B Operators shall be reported to the Division within thirty (30) days of said change in the Division's web based training database.

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

New Rule

Chapter 1200-01-15 Underground Storage Tank Program is amended by the addition of a new rule designated as 1200-01-15-.16 and entitled Certified Operator Program. The new rule reads as follows:

1200-01-15-.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 1200-01-15 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 1200-01-15-.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 1200-01-15-.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 Tennessee UST System Operator Examination administered by the International Code Council and submit the record to the Division, or
 - 3. Obtaining a passing score on the UST System Operator Examination administered by the International Code Council and submit the record to the Division, or
 - 4. 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. Unmanned facilities 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 through appropriate conspicuously posted signage.

(d) 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 1200-01-15-.03. Notice to the Division is not required when replacing a designated Class C Operator.

(e) 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)
Sheri Jacobs	X				
Hugh M. Callaway, Jr	X				
George Hyfantis, Jr.	X				
John Owsley	X				
Allen Barker				X	
Jewel G. Cox				X	
Larry R. Reynolds	X				
Jon G. Roach	X				
Bhag Kanwar	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Petroleum Underground Storage Tank Board on 05/26/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/20/10

Rulemaking Hearing(s) Conducted on: (add more dates). 03/31/10, 04/14/10 and 04/21/10

Date: May 26, 2010

Signature: *Hugh M. Callaway, Jr.*

Name of Officer: Hugh M. Callaway, Jr.

Title of Officer: Chairman



Subscribed and sworn to before me on: 5/26/10

Notary Public Signature: *Wanda Powers*

My commission expires on: 11/7/2012

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

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
11-2-10
 Date

Department of State Use Only

Filed with the Department of State on: _____

11/4/10

Effective on: _____

~~2/2/11~~

03/31/2011

Tre Hargett

Tre Hargett
Secretary of State

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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 the Division needed to specify where to report the change of Class A or B operator (i.e., local field office or Nashville Central Office) in Rule 1200-01-15-.03(1)(h) as well as how to notify the Division (i.e., in writing, etc.).

Response: The Board disagrees and believes that the rule as proposed clearly instructs the regulated community to report any change in Class A, or Class B Operators to the Division within thirty (30) days of said change in the Division's web based training database.

Comment: A commenter felt the Division needed to replace "division" with "Division". See definition for Operator Training, Rule 1200-1-15-.16(2)(b), and Rule 1200-1-15-.16(4).

Response: UST rules use both "Division" and "division", so capitalization is inconsistent throughout the rules. There are three instances in the proposed rules where "division" is used, and many more cases where "Division" is used, so "division" has been changed to "Division" where it occurs in the proposed rules.

Comment: A commenter felt the wording in Rule 1200-01-15-.16(2)(a) wasn't clear and suggested the following changes to subparagraph (a): "Persons wishing to be classified as Class A, Class B, and/or Class C Operators must log onto the Division's web based training database and specify the method for obtaining for the required operator training. Listed below are the options for obtaining operator training:

1. Successful completion of the 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. Leave as is.....
3. Leave as is.....
4. Successful completion of a UST operator training program conducted by the Division."

Response: The Board disagrees and believes that the current wording is clear as is currently written. "Successful completion" of the training is stated previously in the rule and would be redundant here.

Comment: A commenter suggested rewording Rule 1200-01-15-.16(4) Retraining to read as follows: "If a significant operational compliance violation is discovered at the facility at any time, then successful completion of operator retraining, appropriate to the level of the operator Class, must be completed within a time frame acceptable to the Division. "

Response: The Board agrees that the suggested wording contains more clarity, and will make the recommended changes.

Comment: A commenter suggested that the definitions contained in Rule 1200-01-15-.01 for Class A Operator, Class B operator, and Class C operator be rewritten to be more precise and that according to these definitions 'any person having the responsibility' meets the definition without having to do the actual training or going through the designation process. There is a need to add some of the actual requirements for the classes in order to clarify the definitions.

Response: Although verbatim definitions were used from EPA Guidance for each operator class the additional language, "...and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 1200-01-15-.16" was added to each operator class definition.

- Comment: A commenter suggested that the proposed rule be changed in order to allow owners to provide training to Class A and Class B operators and that the proposed rule be revised to state explicitly that owners may provide operator training in an on-line format that communicates the required training content, or, alternatively, that the Division clarify that on-line training is an acceptable training format.
- Response: The Board disagrees since there would be no way for the Division to evaluate every training program offered by every tank owner or track the training without intensive personnel time that the Division does not have.
- Comment: A commenter requested that the Division clarify the options that are available in subparagraphs (2)(a) and (b) of Rule 1200-01-15-.16 for Class C operator training.
- Response: The Board disagrees and maintains that all options are clearly written. If an operator took any of the options listed in subparagraph (2)(a) of Rule 1200-01-15-.16 then they would be Class A or Class B operators and would automatically be a Class C operator with the exception of any site specific information that the person may need to know.
- Comment: A commenter was unclear whether Class C operators who receive training from owners or are trained as Class A or Class B operators pursuant to subparagraph (2)(b) of Rule 1200-01-15-.16 would be required to indicate on the Division's web-based training database that they have completed such training. This commenter requested that the Division modify the proposed rule to clarify that Class C operators who select one of the options listed in subparagraph (2)(b) of Rule 1200-01-15-.16 [other than training using the Division's web-based training program, which is also listed under subparagraph (2)(a) of Rule 1200-01-15-.16] be able to indicate completion of these options on the Division's web-based training database.
- Response: The Rules do not require tracking of Class C operators in the database due to the high turnover of those employees.
- Comment: A commenter believed that the retraining requirements of paragraph (4) of Rule 1200-01-15-.16 for operators would impose costly and burdensome requirements, while yielding few, if any, benefits. This would exceed the EPA Guidelines, which require only Class A or Class B operator be retrained at a noncompliant facility. The EPA Guidelines properly recognized that any noncompliance can be remedied by retraining only one class of operators (Class A or Class B) at a facility. This commenter suggested that the proposed rule be amended to conform to the EPA Guidelines by requiring only a Class A or Class B operator to be retrained at a noncompliant facility.
- Response: The Board disagrees and maintains that the rule as currently written gives the Division the flexibility to adapt retraining to fit not only the violation, but the operator class as well. It is not the intent of these rules to exceed EPA guidelines by requiring retraining of all operator classes at a facility when a significant operational compliance violation is discovered.
- Comment: A commenter pointed out that the proposed rule requires owners to maintain records indicating compliance with the operator training requirements and to provide these records to the Division upon request, but does not state the length of time for which records must be kept or where the records are to be kept. In fact, the proposed rule could be read to require that records be kept indefinitely, a result which would be unreasonable and inconsistent with the intent of the regulations. Given the potential for turnover in personnel serving as operators, particularly among Class C operators, not providing a time limit for records retention could become extremely burdensome. This commenter suggested that the proposed rule be revised to clarify that records of operator training must be kept only as long as the person serves as a Class A, B, or C operator at the facility, but not longer than three (3) years.
- Response: The Board agrees and deleted subparagraph (3)(f) of Rule 1200-01-15-.16 from the proposed rule. Training through the web base database will be tracked by the database for Class A and Class B operators and the Division tracks the operator training conducted by the Division. Parts

(2)(a)3 and 4 of Rule 1200-01-15-.16 was amended to require the one time submittal of the record to the Division. Class C operators are not required to maintain records of their training.

Comment: A commenter stated that in its current form, the proposed rule would not recognize operator training completed in another state and believed that it is important for the proposed rule to include a provision for recognizing operator training conducted outside of Tennessee.

Response: Operator Training programs will vary from state to state. The Division has no effective way to compare the merits of any other state's operator training program and no plans to develop an intensive program to constantly evaluate operator training programs in the other states, plus tribal lands, and territories, much less keep abreast of changes made to those programs. There is a minimum Federal program described in EPA Grant Guidance, however, EPA Grant Guidance is not a federal requirement. It is unrealistic to expect that anyone trained under the Tennessee operator training program should be automatically recognized as meeting any other state's training requirements. The decision to accept training that meets one state's training requirements as meeting the training requirements of any other state rests solely with each state. The rules do recognize the national ICC UST System Operator exam as demonstration that the person has sufficient knowledge to be considered trained, and that is where the Tennessee operator training program provides reciprocity.

Comment: The EPA suggested that more specific requirements be added to the Certified Operator Program where the Class C Operator requirements for unmanned facilities are allowed to be met through appropriate conspicuously posted signage.

Response: The Board does not believe that the suggested EPA language is necessary at this time. The UST Program will give guidance to tank owners and operators regarding appropriate signage and its location to address EPA's concerns.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

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

All businesses owning underground storage tanks are affected by the amendment, however there are minimal economic impacts to any small business because the Division has established a way for tank owners and operators to be trained at no cost other than the cost for their time to take the training.

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

There is a minimum reporting cost, but no recordkeeping or other administrative costs resulting from this amendment. This rule change requires owners and operators to log onto a web based database maintained by the Department to track Class A and Class B operator training.

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

The Rule will require all tank owners to have a trained Class A operator and a Class B operator designated for each facility in the online database established by the Division. It will also require the tank owner to have a trained Class C operator on site at all times during hours of operation. The Rule sets out various methods to for operators to get training, including a free online training developed by the Division. Therefore, the effect on impacted small businesses and consumers should be minimal and will mostly involve the time to take training and track it in the database.

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

The Division has developed a free training option that will be available online at any computer with internet access. It would be difficult to conceive of any less intrusive, less burdensome, or less costly alternative than that would meet spirit and intent of the regulations that EPA would approve.

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

The Board through the Division was required by the EPA to make this regulatory amendment and all other state programs are also required to establish similar operator training programs.

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

Exempting small businesses would not meet the federal requirements which specify that all UST facilities must have trained operators.

Impact on Local Governments

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

The Department anticipates that these amended rules will have a 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 TCA 4-5-226(i)(1).

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

The Rule will require all tank owners to have a trained Class A operator and a Class B operator designated for each facility in the online database established by the Division. It will also require the tank owner to have a trained Class C operator on site at all times during hours of operation. The Rule sets out various methods for operators to get training, including a free online training developed by the Division.

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

This Rule is necessary to meet the requirements for operator training set out in the federal Energy Policy Act of 2005 and is being promulgated under the authority of T.C.A. § 68-215-107.

- (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;

All businesses owning and/or operating petroleum underground storage tank are affected by this rule.

- (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;

Minimal impact.

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

Rhonda Key
Division of Underground Storage Tanks
4th 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
Alan.Leiserson@tn.gov
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
20th 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.

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1200-01-15	Underground Storage Tank Program
Rule Number	Rule Title
1200-01-15-.01	Program Scope, Definitions and Proprietary Information
1200-01-15-.03	Notification, Reporting and Record Keeping
1200-01-15-.16	Certified Operator Program

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Chapter 1200-01-15
Underground Storage Tank Program

Amendments

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"Retraining" means any remedial training approach imposed by the Division when significant operational compliance violations are discovered at a facility. Retraining may be directed to any or all operator classes assigned to a facility and may include requirements to successfully complete additional education, testing, and/or training, or be subject to other administrative or enforcement options at the discretion of the Division.

"UST facility" means any location at which one or more regulated underground storage tank systems are located.

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

Paragraph (1) of Rule 1200-01-15-.03 Notification, Reporting and Recordkeeping is amended by adding a new paragraph so that the new paragraph shall read as follows:

(h) Any change in Class A, or Class B Operators shall be reported to the Division within thirty (30) days of said change in the Division's web based training database.

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

New Rule

Chapter 1200-01-15 Underground Storage Tank Program is amended by the addition of a new rule designated as 1200-01-15-.16 and entitled Certified Operator Program. The new rule reads as follows:

1200-01-15-.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 1200-01-15 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 1200-01-15-.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 1200-01-15-.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
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- (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. Unmanned facilities 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 through appropriate conspicuously posted signage.

- (d) 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 1200-01-15-.03. Notice to the Division is not required when replacing a designated Class C Operator.
- (e) 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)
Sheri Jacobs	X				
Hugh M. Callaway, Jr	X				
George Hyfantis, Jr.	X				
John Owsley	X				
Allen Barker				X	
Jewel G. Cox				X	
Larry R. Reynolds	X				
Jon G. Roach	X				
Bhag Kanwar	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Petroleum Underground Storage Tank Board on 05/26/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/20/10

Rulemaking Hearing(s) Conducted on: (add more dates). 03/31/10, 04/14/10 and 04/21/10

Date: May 26, 2010

Signature: _____

Name of Officer: Hugh M. Callaway, Jr.

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
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 the Division needed to specify where to report the change of Class A or B operator (i.e., local field office or Nashville Central Office) in Rule 1200-01-15-.03(1)(h) as well as how to notify the Division (i.e., in writing, etc.).

Response: The Board disagrees and believes that the rule as proposed clearly instructs the regulated community to report any change in Class A, or Class B Operators to the Division within thirty (30) days of said change in the Division's web based training database.

Comment: A commenter felt the Division needed to replace "division" with "Division". See definition for Operator Training, Rule 1200-1-15-.16(2)(b), and Rule 1200-1-15-.16(4).

Response: UST rules use both "Division" and "division", so capitalization is inconsistent throughout the rules. There are three instances in the proposed rules where "division" is used, and many more cases where "Division" is used, so "division" has been changed to "Division" where it occurs in the proposed rules.

Comment: A commenter felt the wording in Rule 1200-01-15-.16(2)(a) wasn't clear and suggested the following changes to subparagraph (a): "Persons wishing to be classified as Class A, Class B, and/or Class C Operators must log onto the Division's web based training database and specify the method for obtaining for the required operator training. Listed below are the options for obtaining operator training:

1. Successful completion of the 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. Leave as is.....
3. Leave as is.....
4. Successful completion of a UST operator training program conducted by the Division."

Response: The Board disagrees and believes that the current wording is clear as is currently written. "Successful completion" of the training is stated previously in the rule and would be redundant here.

Comment: A commenter suggested rewording Rule 1200-01-15-.16(4) Retraining to read as follows: "If a significant operational compliance violation is discovered at the facility at any time, then successful completion of operator retraining, appropriate to the level of the operator Class, must be completed within a time frame acceptable to the Division. "

Response: The Board agrees that the suggested wording contains more clarity, and will make the recommended changes.

Comment: A commenter suggested that the definitions contained in Rule 1200-01-15-.01 for Class A Operator, Class B operator, and Class C operator be rewritten to be more precise and that according to these definitions 'any person having the responsibility' meets the definition without having to do the actual training or going through the designation process. There is a need to add some of the actual requirements for the classes in order to clarify the definitions.

Response: Although verbatim definitions were used from EPA Guidance for each operator class the additional language, "...and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 1200-01-15-.16" was added to each operator class definition.

- Comment: A commenter suggested that the proposed rule be changed in order to allow owners to provide training to Class A and Class B operators and that the proposed rule be revised to state explicitly that owners may provide operator training in an on-line format that communicates the required training content, or, alternatively, that the Division clarify that on-line training is an acceptable training format.
- Response: The Board disagrees since there would be no way for the Division of evaluate every training program offered by every tank owner or track the training without intensive personnel time that the Division does not have.
- Comment: A commenter requested that the Division clarify the options that are available in subparagraphs (2)(a) and (b) of Rule 1200-01-15-.16 for Class C operator training.
- Response: The Board disagrees and maintains that all options are clearly written. If an operator took any of the options listed in subparagraph (2)(a) of Rule 1200-01-15-.16 then they would be Class A or Class B operators and would automatically be a Class C operator with the exception of any site specific information that the person may need to know.
- Comment: A commenter was unclear whether Class C operators who receive training from owners or are trained as Class A or Class B operators pursuant to subparagraph (2)(b) of Rule 1200-01-15-.16 would be required to indicate on the Division's web-based training database that they have completed such training. This commenter requested that the Division modify the proposed rule to clarify that Class C operators who select one of the options listed in subparagraph (2)(b) of Rule 1200-01-15-.16 [other than training using the Division's web-based training program, which is also listed under subparagraph (2)(a) of Rule 1200-01-15-.16] be able to indicate completion of these options on the Division's web-based training database.
- Response: The Rules do not require tracking of Class C operators in the database due to the high turnover of those employees.
- Comment: A commenter believed that the retraining requirements of paragraph (4) of Rule 1200-01-15-.16 for operators would impose costly and burdensome requirements, while yielding few, if any, benefits. This would exceed the EPA Guidelines, which require only Class A or Class B operator be retrained at a noncompliant facility. The EPA Guidelines properly recognized that any noncompliance can be remedied by retraining only one class of operators (Class A or Class B) at a facility. This commenter suggested that the proposed rule be amended to conform to the EPA Guidelines by requiring only a Class A or Class B operator to be retrained at a noncompliant facility.
- Response: The Board disagrees and maintains that the rule as currently written gives the Division the flexibility to adapt retraining to fit not only the violation, but the operator class as well. It is not the intent of these rules to exceed EPA guidelines by requiring retraining of all operator classes at a facility when a significant operational compliance violation is discovered.
- Comment: A commenter pointed out that the proposed rule requires owners to maintain records indicating compliance with the operator training requirements and to provide these records to the Division upon request, but does not state the length of time for which records must be kept or where the record are to be kept. In fact, the proposed rule could be read to require that records be kept indefinitely, a result which would be unreasonable and inconsistent with the intent of the regulations. Given the potential for turnover in personnel serving as operators, particularly among Class C operators, not providing a time limit for records retention could become extremely burdensome. This commenter suggested that the proposed rule be revised to clarify that records of operator training must be kept only as long as the person serves as a Class A, B, or C operator at the facility, but not longer than three (3) years.
- Response: The Board agrees and deleted subparagraph (3)(f) of Rule 1200-01-15-.16 from the proposed rule. Training through the web base database will be tracked by the database for Class A and Class B operators and the Division tracks the operator training conducted by the Division. Parts

(2)(a)3 and 4 of Rule 1200-01-15-.16 was amended to require the one time submittal of the record to the Division. Class C operators are not required to maintain records of their training.

Comment: A commenter stated that in its current form, the proposed rule would not recognize operator training completed in another state and believed that it is important for the proposed rule to include a provision for recognizing operator training conducted outside of Tennessee.

Response: Operator Training programs will vary from state to state. The Division has no effective way to compare the merits of any other state's operator training program and no plans to develop an intensive program to constantly evaluate operator training programs in the other states, plus tribal lands, and territories, much less keep abreast of changes made to those programs. There is a minimum Federal program described in EPA Grant Guidance, however, EPA Grant Guidance is not a federal requirement. It is unrealistic to expect that anyone trained under the Tennessee operator training program should be automatically recognized as meeting any other state's training requirements. The decision to accept training that meets one state's training requirements as meeting the training requirements of any other state rests solely with each state. The rules do recognize the national ICC UST System Operator exam as demonstration that the person has sufficient knowledge to be considered trained, and that is where the Tennessee operator training program provides reciprocity.

Comment: The EPA suggested that more specific requirements be added to the Certified Operator Program where the Class C Operator requirements for unmanned facilities are allowed to be met through appropriate conspicuously posted signage.

Response: The Board does not believe that the suggested EPA language is necessary at this time. The UST Program will give guidance to tank owners and operators regarding appropriate signage and its location to address EPA's concerns.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

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

All businesses owning underground storage tanks are affected by the amendment, however there are minimal economic impacts to any small business because the Division has established a way for tank owners and operators to be trained at no cost other than the cost for their time to take the training.

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

There is a minimum reporting cost, but no recordkeeping or other administrative costs resulting from this amendment. This rule change requires owners and operators to log onto a web based database maintained by the Department to track Class A and Class B operator training.

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

The Rule will require all tank owners to have a trained Class A operator and a Class B operator designated for each facility in the online database established by the Division. It will also require the tank owner to have a trained Class C operator on site at all times during hours of operation. The Rule sets out various methods to for operators to get training, including a free online training developed by the Division. Therefore, the effect on impacted small businesses and consumers should be minimal and will mostly involve the time to take training and track it in the database.

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

The Division has developed a free training option that will be available online at any computer with internet access. It would be difficult to conceive of any less intrusive, less burdensome, or less costly alternative than that would meet spirit and intent of the regulations that EPA would approve.

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

The Board through the Division was required by the EPA to make this regulatory amendment and all other state programs are also required to establish similar operator training programs.

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

Exempting small businesses would not meet the federal requirements which specify that all UST facilities must have trained operators.

Impact on Local Governments

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

The Department anticipates that these amended rules will have a 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 TCA 4-5-226(i)(1).

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

The Rule will require all tank owners to have a trained Class A operator and a Class B operator designated for each facility in the online database established by the Division. It will also require the tank owner to have a trained Class C operator on site at all times during hours of operation. The Rule sets out various methods for operators to get training, including a free online training developed by the Division.

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

This Rule is necessary to meet the requirements for operator training set out in the federal Energy Policy Act of 2005 and is being promulgated under the authority of T.C.A. § 68-215-107.

- (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;

All businesses owning and/or operating petroleum underground storage tank are affected by this rule.

- (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;

Minimal impact.

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

Rhonda Key
Division of Underground Storage Tanks
4th 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
Alan.Leiserson@tn.gov
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
20th 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.