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Sequence Number: 09-53-15
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 File Date: 9-28-15

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	Keith Bell
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	GINNA WINFREE
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower, 500 James Robertson Parkway, 3 rd Floor		
Address 2:			
City:	Nashville		
Zip:	37243		
Hearing Date:	11/20/2015		
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0100-09	Responsible Beer Vendor Program
Rule Number	Rule Title
0100-09-.01	Definitions
0100-09-.02	Application/Certification Process
0100-09-.03	Responsible Beer Vendor Training Program Format
0100-09-.04	Miscellaneous Provisions
0100-09-.05	Fines

Chapter Number	Chapter Title
Rule Number	Rule Title

(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 0100-09 Responsible Vendor Program is amended by deleting the chapter in its entirety and by substituting instead the following language:

**RULES
OF
TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 0100-09
RESPONSIBLE BEER VENDOR PROGRAM**

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0100-09-.01 DEFINITIONS.

- (1) Certified Clerk. For the purposes of this chapter, a certified clerk is a certified responsible beer vendor employee who has successfully completed a certified training course and, if appropriate, has received required additional annual training as set forth in the rules.
- (2) Clerk. For the purposes of this chapter, a clerk is a certified responsible beer vendor employee who works in a capacity to sell, provide, distribute, and/or otherwise dispense beer of alcoholic content as defined at T.C.A. § 57-5-101(b) and whose duties include the opportunity to sell, provide, distribute and/or otherwise dispense such products. Clerks also include those certified responsible beer vendor employees who monitor self-scan or customer-scan check-out areas.
- (3) Commission. The Commission shall mean the Tennessee Alcoholic Beverage Commission.
- (4) Hire Date. The applicable hire date for a clerk is when that employee's duties and responsibilities include the opportunity to sell, provide, distribute and/or otherwise dispense beer of alcoholic content as defined at T.C.A. § 57-5-101(b).
- (5) In-house Program. An in-house program is a training program administered by a vendor for the vendor's employees.
- (6) Public Program. A public program is a training program administered to any individual by an entity other than a vendor. A public training program is also a training program administered by a vendor to both its own employees as well as other individuals.
- (7) Training date. The training date is the date on which a clerk successfully completes a vendor training program for a particular vendor.
- (8) Valid Identification. Valid identification means government issued identification that includes photograph and that has not expired. Such identification includes driver's licenses, military identification, passports and permanent resident cards.

Authority: T.C.A. §§ 57-1-209 and 57-5-605(b). **Administrative History:** Original rule filed March 10, 2010; effective June 8, 2010.

0100-09-.02 APPLICATION/CERTIFICATION PROCESS.

- (1) Application for Certification of a Responsible Beer Vendor Training Program. Any entity or individual seeking to have a responsible beer vendor training program certified shall complete and submit a written application on forms prescribed by the Commission. The application shall disclose the following information:
 - (a) The identity of the applicant seeking to have the program certified, including the address, names of all individuals responsible for beer vendor training, and the source of the curriculum utilized by the applicant.
 1. If the applicant is a corporation or LLC, a copy of the corporate charter, articles of organization, and/or certificate of authority must be submitted.
 2. If the applicant is a partnership, a copy of the certificate filed with the Tennessee Secretary of State's Office (if a limited partnership), or other document evidencing formation of such partnership is required.
 - (b) Each program applicant shall submit to the Commission a copy of all training materials (including video or audio materials used for their program). A true and exact copy of the curriculum, including tests, to be utilized in the responsible beer vendor training program must also be submitted. Prior to any modifications to the training materials, such proposed modifications shall be submitted to the Commission for approval. To be certified, a responsible beer vendor program must offer a curriculum which, at a minimum, contains the following items:
 1. The effect of alcohol on the human body focusing on these elements:
 - (i) The behavioral effects of alcohol: i.e., decrease in reaction and decision making capability;
 - (ii) Interaction and combined effects of mixing alcohol with legal and/or illegal drugs; and
 - (iii) Identification of possible intoxicated customers.
 2. Identifying situations in which clerk intervention is appropriate.
 3. Handling situations and people in a non-confrontational manner and identifying when support from co-workers is necessary.
 4. Suggested responses by clerks to situations involving intoxicated and/or underage persons.
 5. A review of current Tennessee laws, rules, and regulations promulgated by the Commission relating to the sale beer and/or malt beverages and the Tennessee Responsible Vendor Act of 2006.
 6. A review of appropriate identification including acceptable driver's licenses, military identification, passports, and other government issued photo identification cards; and
 7. A review of how to identify fake and/or altered identifications as described above.
 8. Advising attendees that local ordinances may exist affecting the sale of alcoholic and malt beverages.

- (c) If the responsible beer vendor training program conducts in-person training, then the program shall submit a TABC questionnaire for each trainer conducting their class to the Commission. Such completed questionnaire must be received by the Commission prior to that trainer conducting classes.
 - (d) Any other information requested by the Commission; and
 - (e) Appropriate certification fee.
- (2) If the training program is conducted through the use of the Internet or Intranet, then in addition to the items required above, the training program must provide verification acceptable to the Commission that the identity of the users may be authenticated.
- (3) Renewal of Responsible Beer Vendor Training Program Certification.
- (a) Responsible Beer Vendor Training Program Certification shall be valid for a period of one year from the date of issue.
 - (b) To prevent interruption of certification, the responsible beer vendor training program must fulfill the following requirements at least thirty (30) days prior to expiration date:
 - 1. Submit to the Commission a completed renewal application along with any amended or updated materials;
 - 2. List of all current trainers;
 - 3. Appropriate renewal fee.
- (4) Application for Certification of a Responsible Beer Vendor. Any entity or individual seeking to become a certified responsible beer vendor shall complete and submit a written application on forms prescribed by the Commission. The application shall disclose the following information:
- (a) The identity of the applicant seeking to achieve responsible beer vendor status, including the address, phone number, and any other information required by the Commission.
 - 1. If the applicant is a corporation or LLC, a copy of the corporate charter and/or certificate of authority must be submitted.
 - 2. If the applicant is a partnership, a copy of the certificate filed with the Tennessee Secretary of State's Office (if a limited partnership), or other document evidencing formation of such partnership is required.
 - (b) Names and identifying information of all clerks employed—such information shall be submitted on forms prescribed by the Commission;
 - (c) Name of beer board issuing beer permit to applicant, beer board address, and beer permit number;
 - (d) Any other information requested by the Commission;
 - (e) Identification of training program used; and
 - (f) Appropriate certification fees.

- (5) Application for Renewal of Certification of Responsible Beer Vendor.
- (a) Program certification shall be valid for a period of one year from the date of issue.
 - (b) To prevent interruption of certification, the responsible beer vendor must fulfill the following requirements at least thirty (30) days prior to expiration date:
 - 1. Submit to the Commission a completed renewal application along with any amended or updated materials; and
 - 2. Each responsible beer vendor shall submit at least thirty (30) days prior to the expiration of the certification a renewal application; a current list of all clerks and their hire dates (such shall be submitted on forms prescribed by the Commission); the date that the certified clerks received their annual training; and the appropriate certification fee.
- (6) Neither program nor responsible beer vendor certifications are transferable. Before a transfer of ownership can occur, that new entity must first make application for certification to the Commission pursuant to the rules and regulations. The new business entity may not begin training and the vendor will not be certified by the Commission until an application for certification is approved. Once the location is certified as a responsible beer vendor, then the responsible beer vendor has 61 days to train its clerks.

Authority: T.C.A. §§ 57-1-209 and 57-5-605(b). **Administrative History:** Original rule filed March 10, 2010; effective June 8, 2010.

0100-09-.03 RESPONSIBLE BEER VENDOR TRAINING PROGRAM FORMAT.

- (1) Complete training program must be at least (2) hours of instruction, excluding breaks for attendees. Such training program must take place in a publicly accessible location, but may take place on the certified responsible beer vendor's premises. Training programs may not be conducted in private homes.
- (2) The training program must provide either printed materials to attendees or make training materials available online for review after completion of the training. Once a program has been certified by the Commission, the following statement shall be placed in bold type on the cover sheet of such written materials or manuals: "**This program has approved by the Tennessee Alcoholic Beverage Commission as currently satisfying the requirements contemplated by the Tennessee Responsible Vendor Act of 2006**".
- (3) (a) At the beginning of each training program, attendees shall be advised that they must meet the following qualifications to be a certified clerk eligible to participate in the responsible beer vendor program:
 - i. Be at least 18 years of age;
 - ii. Must not have been criminally convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages within the past ten (10) years; and
 - iii. Must not have been convicted of any crime involving moral turpitude within the past ten (10) years.

RESPONSIBLE BEER VENDOR PROGRAM
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(Rule 0100-09-.03, continued)

- (b) A responsible beer vendor is not required to perform criminal background checks on employees or clerks; however, the responsible beer vendor should inquire on the application as to any convictions the employee or clerk has had for the past ten years.
- (4) Testing.
 - (a) Upon completion of the training, the program must adequately test the comprehension and understanding of the attendees. Testing should be sufficiently randomized and conducted in such a manner as to prohibit prior knowledge of the answers by users. A passing score of at least seventy-five (75) % percent will be required from each person attending the training before a certificate may be issued-unless the certified beer vendor program requires a higher score.
 - (b) Any attendee failing to attain this passing score may contact the certified program licensee to schedule a second examination within thirty (30) days. A second examination shall be provided to the attendee by the responsible beer vendor program without additional charge.
 - (c) If the second examination is not scheduled and taken within this thirty day period, then the attendee shall be required to attend a second training program in its entirety and pass the test before being eligible to obtain the certificate. Nothing herein shall act to extend the original sixty-one (61) day grace period from the date of hire as a clerk.
 - (d) Within twenty-one (21) calendar days of the training date, the certified program must provide to the Commission a list of all clerks who have successfully completed the program along with the vendor for which each clerk completed the training.
 - (e) If the certified program and responsible beer vendor are the same entity (i.e., if the responsible beer vendor has an in-house certified program), then a single notification to the Commission is sufficient.
- (5) Alcoholic beverages may not be consumed by the instructor or any attendee during the training program.
- (6) All training must be conducted in a professional manner: materials and comments may not be offensive in nature.
- (7) (a) All Certified Responsible Beer Vendor Training Programs shall issue a certificate of completion for any clerk who has successfully completed the training. The original certificate of completion shall be forwarded to the appropriate responsible beer vendor, and the clerk successfully completing the training shall receive a copy. Each certificate of completion shall include the following information:
 - 1. Name and date of birth for clerk;
 - 2. Name of certified program providing the training;
 - 3. Date on which the clerk successfully completed the program; and
 - 4. Name and complete address of responsible beer vendor receiving the certificate of completion.
- (b) Any certified program or responsible beer vendor offering or submitting a fraudulent, fake and/or altered certificate of completion to a TABC representative or to the

RESPONSIBLE BEER VENDOR PROGRAM
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(Rule 0100-09-.03, continued)

Commission shall subject their certification to immediate disciplinary action—including, but not limited to, summary suspension and revocation.

- (8) All Certified Training Programs shall permit access to Commission representatives. Failure to permit access to a Commission representative will result in the program being required to show cause to the Commission why its certification should not be revoked.
- (9) A successful completion by a clerk of a responsible beer vendor training conducted by a certified training program within 61 days prior to the responsible beer vendor submitting its application to the Commission shall be valid. However, such training is valid only for one designated responsible beer vendor location.

Authority: *T.C.A. §§ 57-1-209 and 57-5-605(b)*. **Administrative History:** Original rule filed March 10, 2010; effective June 8, 2010.

0100-09-.04 MISCELLANEOUS PROVISIONS.

- (1) Clerk Applicants with Special Needs. Persons with special needs must contact the certified program at least seven (7) calendar days in advance of the training date to request specific assistance in completing that program. Notwithstanding any other provision of these rules, the certified program shall endeavor to provide reasonable accommodations when requested on a case by case basis in compliance with state and federal law.
- (2) (a) Within ten (10) calendar days of the training date, the responsible beer vendor training program must submit to the responsible beer vendor a list of all clerks who successfully completed the training program and received a certificate of completion. Responsible training beer vendor programs shall maintain records of those successfully completing the training program for a period of at least three years to be available for the Commission to review.
 - (b) (i) If a responsible beer vendor owns and operates several locations (operating under the same business name and corporate name) and is using the same responsible beer vendor program for each location, then clerks and/or employees attending a responsible beer vendor program may—upon the initial training course—designate the various locations within the same responsible beer vendor's operation. The successful completion of the training course will be sufficient for training requirements at each designated location. This option does not apply to individuals working at responsible beer vendor locations owned by different entities. The responsible beer vendor training program will issue a certificate to the clerk/employee for each location designated at the time of the class.
 - (ii) For the purposes of certification costs, employees described in the above paragraph will be counted as an employee for each location.
 - (iii) For clerks desiring to add new responsible beer vendor locations under the same ownership after the initial designation, then new training must occur for each location.
- (3) (a) Within twenty-one (21) calendar days of the training date, the responsible beer vendor must submit to the Commission a list of all clerks who have successfully completed the training program and received a certificate of completion. Such list shall on be submitted on forms prescribed by the Commission.

- (b) If the certified program and responsible beer vendor are the same entity (i.e., if the responsible beer vendor has an in-house certified program), then a single notification to the Commission is sufficient.
- (4) Commission Training Program. To further implement the policy and standards of the Tennessee Responsible Vendor Act of 2006, the Commission may conduct its own training program for clerks. The cost to each clerk in attendance for this training program will be \$35.00. While attendance at a responsible beer vendor program for alcohol awareness is required for any clerk working at a responsible beer vendor location, it is not necessary that such clerk attend the Commission program.
- (5) Each responsible beer vendor shall maintain and have available for review by Commission representatives' employment and training records for all clerks. Such documentation shall include, but is not limited to, the following information for each clerk:
 - (a) Name, address, and social security number;
 - (b) Date of hire;
 - (c) Date of training by certified responsible beer vendor program;
 - (d) Date of required annual training related to updated information, policies and procedures.
- (6) Loss of Clerk Certification.
 - (a) A certified clerk shall lose their certification under the following circumstances:
 1. If the beer board determines that the clerk sold alcoholic beverages to a minor. The clerk shall lose their certification for a period of one year beginning on the date of the beer board's determination; or
 2. If the clerk receives a criminal conviction of a charge involving the sale of alcoholic beverages to a minor. The clerk shall lose their certification beginning on the date of the conviction, and is further subject to the provisions of T.C.A. § 57-5-301(a)(1); or
 3. Certified clerks must annually attend a meeting regarding updated statutory information as required by T.C.A. § 57-5-601 et seq. This annual meeting shall be held for all clerks within the last quarter of each calendar year. Within twenty-one days after the annual training, the responsible beer vendor shall notify the Commission in writing if the certified clerk has not attended the annual meeting regarding updated statutory information as required by T.C.A. § 57-5-601 et seq. Upon such notification by the responsible beer vendor to the Commission, the certification for identified clerk shall immediately become invalid. Such clerk shall not work in a capacity to sell beer directly to consumers for off-premise consumption until the clerk has received the required updated training; or
 4. If the clerk has not attended at least one annual meeting by the time set forth in these rules and received updated information disseminated by the responsible beer vendor.
 - (b) If a clerk loses their certification but continues to work as a clerk and subsequently, sells beer to an under-aged individual, then the responsible beer vendor shall not be considered a responsible beer vendor for the purposes of disciplinary action taken by a beer board.

- (7) Name Badge. Each certified clerk is required to wear a name badge issued by the responsible beer vendor. Such name badge shall contain the clerk's legal first name, or "given name," but may omit the clerk's last name, or family name, and must be clearly visible to the general public.
- (8) Grace Period.
- (a) Clerks have sixty-one (61) calendar days from their date of hire as a clerk to successfully complete responsible beer vendor training. During this 61 day grace period, if a sale to a minor takes place the Responsible Beer Vendor is treated as having responsible beer vendor status. Any criminal action against the clerk is not affected. If clerks have not received the appropriate training within 61 calendar days of their date of hire, then the responsible beer vendor temporarily loses its status as a responsible beer vendor immediately at the conclusion of the 61 calendar day period. However, if the situation is corrected within thirty (30) calendar days, then upon payment of a civil penalty to the Commission, the status of "responsible beer vendor" may be re-instated. If training does not occur to remedy the situation within thirty (30) calendar days, then the responsible beer vendor status is considered expired and the vendor permanently loses its status as a responsible beer vendor, and a new application must be submitted and training must re-occur.
- (b) In scenario above, should a beer permittee be subject to disciplinary action by a local beer board for a violation involving the sale of alcoholic beverages to a minor, the Commission will, upon request, advise the beer board that the permittee is not a responsible beer vendor because all employees have not received adequate training in a timely manner.
- (c) If a clerk who is not eligible to participate in the responsible beer vendor program (i.e., if the clerk is under the age of eighteen) sells alcohol to a minor, then the responsible beer vendor loses its status as a responsible beer vendor and is subject to the discretion of the local beer board as it relates to disciplinary action against the beer permit.
- (d) Upon request, the Commission will issue an affidavit, signed by appropriate personnel, to certify the status of a clerk or responsible beer vendor. This affidavit will be sufficient in lieu of in-person testimony by a Commission representative before a local beer board.
- (9) Refusal of Cooperation. Any certified clerk, responsible beer vendor program, responsible beer vendor, its agent, or employee, who refuses to open or disclose its records to, or furnish information to, or who furnishes false and/or misleading information to a TABC special agent, regulatory officer or any representative of the Commission upon any matter directly and/or indirectly relating to the responsible beer vendor program, certification, employees, etc., shall subject the certification and participation in the responsible beer vendor program to suspension and/or revocation.
- (10) Beer Boards and Local Law Enforcement. Communication between city and/or county beer boards, local law enforcement and the Commission is vital for the success of the Responsible Beer Vendor program.
- (a) When a vendor appears before a city or county beer board for an administrative charge of the sale of alcohol to a minor, the Commission will either:
1. Verify the vendor and/or clerk who sold the alcohol to a minor are certified and are eligible for mitigation in disciplinary action according to the statute; or

2. Verify such vendor and/or clerk have not been certified, and are not eligible for mitigation in disciplinary actions by the regulating beer board.
 - (b) Local beer boards should notify the Commission when disciplinary actions involving the sale of alcoholic beverages to a minor have been taken against an off-premise beer permittee within 15 days of such action.
 - (c) If a beer permittee represents to a city or county beer board that they are a responsible beer vendor but are not, then the city or county beer board should notify the Commission of such misrepresentation. Such beer permittee shall be ineligible to participate in the responsible beer vendor program for a period of three (3) years from the date of misrepresentation.
 - (d) Local law enforcement should notify the Commission when an employee of an off-premise beer permittee has been criminally convicted of a charge involving the sale of alcoholic beverages to a minor.
- (11) Notice of training sessions. The Commission must be notified seven (7) calendar days in advance of any training if the training will be conducted by an individual(s) at a location where clerks will be present. The notice must include the name of the training program, the instructor, the complete address of the training site, and the time and location of the training.
- (12) To obtain the benefits associated with being a certified responsible beer vendor, the beer permittee must actually be certified by the Commission as a responsible beer vendor at the time of the offense. Any application for certification as a responsible beer vendor submitted to the Commission with charges/offenses pending before the local beer board will not be reviewed until such charges/offenses are concluded: the approval or denial of the responsible beer vendor application will be made once the Commission has received notification of the result of the pending charges/offenses.
- (13) Once the Commission receives notification of a second offense sale of alcohol to a minor within a twelve month period, then the Commission shall revoke the responsible beer vendor's certification as a responsible beer vendor for a period of three years. Subsequent sales of alcohol to minors by the beer permittee do not receive protection under the responsible beer vendor training provisions.

Authority: T.C.A. §§ 57-1-209 and 57-5-605(b). **Administrative History:** Original rule filed March 10, 2010; effective June 8, 2010.

0100-09-.05 FINES.

- (1) The Commission is given the power and authority to suspend or revoke any license or permit issued pursuant to Title 57, Tennessee Code Annotated, for any violation thereof; however, the Commission may, in its discretion, impose a fine as set out hereafter, in lieu of suspension or revocation of any license or permit.
- (2) Fines may be used to informally remedy a matter by written consent of all parties to the matter.
- (3) Any violation of the Rules and Regulations promulgated to implement and maintain the Responsible Vendor Act of 2006 may result in the imposition of a fine, suspension, or revocation of any certification, license, or permit issued by the Commission.
- (4) Providing false or misleading information in any required document, application, and/or investigation may result in the denial of that application, or the suspension or revocation of a program's or vendor's certification.

(5) Fines may be assessed for the following violations:

a. Against a Responsible Beer Vendor:

1. Misrepresentation of status as a Responsible Beer Vendor;
2. Willful failure to comply with Tennessee statutes and Tennessee Alcoholic Beverage Commission Rules and Regulations;
3. Failure to have Clerk certified within 61 calendar days of hire date;
4. Failure to verify eligibility of clerk for certification prior to hiring with the Commission;
5. Failure to maintain original certification of completion for clerk at Responsible Beer Vendor location;
6. Failure to notify Commission within twenty-one (21) calendar days of training for certified clerk;
7. Failure to provide or have clerk display name badge while on duty;
8. Failure to provide instructions for its employee's as approved by the Commission;
9. Failure to have certified clerk meet annual meeting requirements;
10. Failure of Responsible Beer Vendor to disseminate updated information prescribed by the Commission and the Responsible Beer Vendor Policy and Procedures related thereto;
11. Failure to notify Commission of clerk failure to attend annual meeting following original certification;
12. Failure to maintain records of certified clerk required annual meeting;
13. Failure to disseminate information related to changes in State Law or Commission Rules and Regulations to certified clerks as required by the Commission;
14. Failure to maintain employment records and all responsible training records of all clerks;
15. Failure to cooperate by not providing information requested by the Commission;
16. Failure to notify Commission of change in training program;
17. Allowing a decertified clerk to continue to operate in a capacity to sell beer directly to consumer;
18. Failure to have Responsible Beer Vendor certificate posted;
19. Failure to Renew Responsible Beer Vendor Certification in a timely manner.

b. Against a Training Program:

1. Failure to meet mandatory minimum class time;
2. Not a TABC certified training program for Responsible Beer Vendor Training;
3. Failure to adequately test the comprehension and understanding of the attendees of the Responsible Beer Vendor Training of off premise sale of beer;
4. Failure to cover the required material;

5. Failure to timely renew certification.

Authority: *T.C.A. §§ 57-1-209 and 57-5-605(b)*. Administrative History: Original rule filed March 10, 2010; effective June 8, 2010.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: Sept. 28, 2015

Signature: E. Keith Bell

Name of Officer: E. Keith Bell

Title of Officer: Executive Director

Subscribed and sworn to before me on: September 28, 2015

Notary Public Signature: Rosemary S. Adams

My commission expires on: January 8, 2019

Department of State Use Only

Filed with the Department of State on: 9-28-15

Tre Hargett

Tre Hargett
Secretary of State

