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Sequence Number: 11-16-12
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 File Date: 11/26/12

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.

Agency/Board/Commission:	Environment and Conservation
Division:	Radiological Health
Contact Person:	Beth Shelton
Address:	3 rd Floor L & C Annex 401 Church Street Nashville, Tennessee 37243-1532
Phone:	(615)532-0392
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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:	ADA Coordinator
Address:	12 th Floor, L&C Tower 401 Church Street Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	beverly.evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	17 th Floor Conference Room, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	01/23/13		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Beth Shelton at the Division of Radiological Health, Central Office, address below, prior to or following the public hearing. However, the Division must receive comments in its Central Office by 4:30 p.m. (CST), January 23, 2013, in order to assure consideration.

Copies of draft rules are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

Nashville Field Office
 711 R. S. Gass Boulevard
 Nashville, TN 37243
 (615) 687-7000 / 1-888-891-8332

Knoxville Field Office
 3711 Middlebrook Pike
 Knoxville, TN 37921
 (865) 594-6035 / 1-888-891-8332

Chattanooga Field Office
State Office Building
540 McCallie Avenue, Suite 550
Chattanooga, TN 37402-2013
(423) 634-5781 / 1-888-891-8332

Memphis Field Office
8383 Wolf Lake Drive
Bartlett, TN 38133-4119
(901) 368-7939 / 1-888-891-8332

Copies are available for review also at the Division of Radiological Health, Central Office:

Division of Radiological Health
L & C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532
(615) 532-0364

The "DRAFT" rules may be accessed for review also at the Department's World Wide Web Site located at <http://www.state.tn.us/environment/rad>.

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
0400-20-10	Licensing and Registration
Rule Number	Rule Title
0400-20-10-.24	Registration
0400-20-10-.31	Fees for Licenses
0400-20-10-.34	Supplemental Fees For Calendar Year 2013

(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.in.us/sos/rules/1360/1360.htm>)

Chapter 0400-20-10
Licensing and Registration

Amendments

Subparagraph (a) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (a) shall read as follows:

(a) Radiation Machines

CLASS I

Dental Radiation Machines: \$85.00 per tube

All diagnostic equipment used exclusively for dental diagnostic procedures.

CLASS II

Priority Two Medical Radiation Machines: \$195.00 per tube

All medical diagnostic x-ray equipment, not in Class III, used exclusively for medical or veterinary diagnostic procedures.

CLASS III

Priority One Medical Radiation Machines: \$286.00 per tube

All diagnostic x-ray equipment used in radiologists' offices, orthopedic surgeon's offices or hospitals exclusively for medical diagnostic procedures.

CLASS IV

Therapy Medical Radiation Machines: \$390.00 per tube

All x-ray equipment with energies less than 0.9 MeV used for the purpose of medical or veterinary radiation therapy.

CLASS V

Priority Two Industrial and Educational Radiation Machines: \$780.00 per tube

Closed-beam analytical radiation machines, gauges or industrial radiation machines used in shielded room or cabinet radiography.

CLASS VI

Priority One Industrial and Educational Radiation Machines: \$1,170.00 per tube

All x-ray machines used for industrial radiography and all open-beam analytical x-ray machines and all radiation machines not specifically included in Class I, II, III, IV, V, VII.

CLASS VII

Accelerators:	\$2,600.00 annual fee, plus an initial fee of \$375.00 per maximum nominal rated MeV for initial certified registration review (initial review fee not to exceed \$150,000.00)
All devices defined as accelerators as per "State Regulations for Protection Against Radiation."	

Subparagraph (b) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (b) shall read as follows:

(b)	A person providing inspection services as permitted by paragraph (4) of Rule 0400-20-10-.27, except as provided by subparagraph (3)(f) of Rule 0400-20-10-.24, shall pay an annual registration fee of eight hundred fifty dollars.	\$850.00
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Subparagraph (c) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (c) shall read as follows:

(c)	A person providing assembly/installation/servicing, except as provided by subparagraph (3)(f) of Rule 0400-20-10-.24, shall pay an annual registration fee of eight hundred fifty dollars.	\$850.00
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Subparagraph (f) of paragraph (3) of Rule 0400-20-10-.24 Registration is amended by deleting the subparagraph and substituting the following so that, as amended, subparagraph (f) shall read as follows:

(f)	A person providing inspection services, as permitted by paragraph (4) of Rule 0400-20-10-.27, or a person providing assembly/installation/servicing, who is a staff member of the facility registered pursuant to Tennessee Code Annotated (T.C.A.) § 68-202-101 et seq. and these Regulations, and who performs such inspection services or assembly/installation/servicing only for that registrant, shall pay an annual registration fee of eight hundred fifty dollars.
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Authority: T.C.A. §§ 68-202-203 and 68-202-206.

Paragraph (6) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$150.00" from the paragraph and replacing it with "\$350.00" so that, as amended, paragraph (6) shall read as follows:

(6)	CATEGORY GL -----	\$350.00
	Any person possessing radioactive material, under the terms of any general license issued these regulations, in a form or device on which a test for leakage of radioactive material is required.	

Paragraph (7) of Rule 1200-02-10-.31 Fees for Licenses is amended by deleting "\$300.00" from the paragraph and replacing it with "\$425.00" so that, as amended, paragraph (7) shall read as follows:

(7)	CATEGORY 1 -----	\$425.00
	A specific license for source material used exclusively for shielding radiation.	

Paragraph (8) of Rule 1200-02-10-.31 Fees for Licenses is amended by deleting "\$600.00" from the paragraph and replacing it with "\$850.00" so that, as amended, paragraph (8) shall read as follows:

(8)	CATEGORY 2 -----	\$850.00
(a)	Reserved.	

- (b) The application, use or possession of radioactive material as chromatography sources or gauges not requiring assignment to another category.
- (c) The application, use or possession of radioactive material for in vitro use only, total quantity not to exceed 200 microcuries.
- (d) Any person who packages or containerizes, loads transport vehicles or ships radioactive materials to a licensed disposal/processing facility in Tennessee. In addition to application and annual maintenance fees, there is also a levied fee of two cents per pound (\$0.02/lb) on all items contaminated or potentially contaminated with radioactive material or on low-level radioactive waste received at a processing, storage, disposal or refurbishing facility in Tennessee.

Notwithstanding the requirements of this paragraph and Rule 1200-02-10-.32, licensees with multiple sites within the state will be levied only one fee if items are moved directly from one site to another.

The operator of the disposal/processing facility shall collect the fee of two cents per pound (\$0.02/lb). For each calendar month, he shall remit the total of fees collected for the month to the Division of Radiological Health by the 25th day of the following month.

- (e) The application, use or possession of radioactive material for the calibration for hire of radiation detection, monitoring and measuring instruments.
- (f) The performance for hire of leak tests on sealed sources of radioactive material.

Paragraph (9) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$900.00" from the paragraph and replacing it with "\$1170.00" so that, as amended, paragraph (9) shall read as follows:

- | | | |
|-----|------------------|------------|
| (9) | CATEGORY 3 ----- | \$1,170.00 |
|-----|------------------|------------|
- (a) The application, use or possession of radioactive material, unless specific to a higher numbered category, by an academic institution, but does not include licenses authorizing all radioisotopes with atomic number 3 through 83.
 - (b) The possession and use of radioactive material for civil defense activities.
 - (c) The application, use or possession of radioactive material by a medical, institution or physicians for use in radiopharmaceuticals for the diagnosis or therapy of humans.
 - (d) Reserved.
 - (e) Reserved.
 - (f) Reserved.
 - (g) The application, use or possession of radioactive material for demonstration or training purposes.
 - (h) The application, use or possession of radioactive material for in vitro use only, total quantity exceeding 200 microcuries.

- (i) The use of sealed sources for soil and/or construction materials testing at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.
- (j) The use of radioactive material as chromatography sources at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.
- (k) The use of gauging and measuring devices at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.

Paragraph (10) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$1500.00" from the paragraph and replacing it with "\$1950.00" so that, as amended, paragraph (10) shall read as follows:

- | | | |
|------|--|------------|
| (10) | CATEGORY 4 ----- | \$1,950.00 |
| | (a) The application, use or possession of radioactive material by a medical institution or physicians for interstitial, intracavitary or superficial treatment of humans using sealed sources, seeds or wires. | |
| | (b) The application, use or possession of radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-contained irradiators). | |
| | (c) The application, use or possession of radioactive material for analytical testing purposes. | |

Paragraph (11) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$2100.00" from the paragraph and replacing it with "\$2730.00" so that, as amended, paragraph (11) shall read as follows:

- | | | |
|------|--|------------|
| (11) | CATEGORY 5 ----- | \$2,730.00 |
| | (a) The use of radioactive material in research and development, manufacturing, testing, processing and assembling of products. This group includes the use of source material in the manufacture of items such as mantles, alloys, gases, liquids, metals, ceramics, glass or photographic products. | |
| | (b) The use of radioactive material in a process that incorporates that material into a product in exempt concentrations. | |
| | (c) The possession and use of radioactive material in curie quantities in a number of sources in gauges and gauging applications that require frequent changes and therefore frequent review of the program to ensure that the hazard potential does not exceed the scope of the radiation safety program. | |
| | (d) The use of a single radioactive material in the fabrication of sealed sources or ampoules. | |
| | (e) The receipt of prepackaged radioactive material waste from other persons by a nuclear waste handler for storage for less than three (3) months before, transfer only to persons licensed to receive or dispose of the material. | |
| | (f) The use of sealed sources for soil and/or construction materials testing at temporary job-sites by licensees with licensed authorization for more than two (2) devices. | |
| | (g) The use of radioactive material as chromatography sources at temporary job-sites by licensees with licensed authorization for more than two (2) devices. | |

- (h) The use of gauging and measuring devices at temporary job-sites by licensees with licensed authorization for more than two (2) devices.
- (i) The application, use or possession of radioactive material by a medical institution or physicians for the treatment of humans with sealed sources contained in teletherapy devices.
- (j) The application, use or possession of radioactive material by a veterinarian for the treatment of animals using sealed sources, seeds or wires.

Paragraph (12) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$6,000.00" from the paragraph and replacing it with "\$7,800.00" so that, as amended, paragraph (12) shall read as follows:

(12)	CATEGORY 6 -----	\$7,800.00
	(a) The application, use or possession of radioactive material including source and/or special nuclear material in unsealed form in less than multi-curie quantities for use in the fabrication of sealed sources without regard to amount of contained radioactivity.	
	(b) The manufacture of devices and/or sources that require in-depth review before approval by the Division. Each device and/or source reviewed shall be subject to this fee.	
	(c) The preparation, use or distribution of radiopharmaceuticals to locations other than the licensee's address for use in medical diagnosis or therapy.	
	(d) The use of radiography (the examination of the structure of materials by nondestructive methods using radioactive material) on the licensee's premises in a permanent shielded facility or temporary job-sites.	
	(e) The possession and use of radioactive material by academic and medical institutions under a license authorizing all radioisotopes with atomic numbers 3 through 83.	
	(f) Reserved.	
	(g) The application of radioactive material to soil, water, air, plants and animals, if the application involves an actual or potential release in or to unrestricted areas.	
	(h) The possession, use and distribution of radioactive material at one or more satellite facilities, or the possession and use of radioactive material at one or more satellite facilities, by medical institutions.	
	(i) The application, use or possession of radioactive material by a medical institution or physicians for research using humans and/or animals.	

Paragraph (13) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$4,000.00" from the paragraph and replacing it with "\$5,200.00" so that, as amended, paragraph (13) shall read as follows:

(13)	CATEGORY 7 -----	\$5,200.00
	(a) Reserved.	
	(b) Reserved.	
	(c) The application, use or possession of radioactive material for well logging, well surveys or tracer studies.	

Paragraph (14) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$11,250.00" from the paragraph and replacing it with "\$14,625.00" so that, as amended, paragraph (14) shall read as follows:

- (14) CATEGORY 8 ----- \$14,625.00
- (a) The receipt of radioactive material waste from other persons by a nuclear waste handler, for the purpose of packaging or repackaging the material prior to transfer only to persons licensed to receive or dispose of the material.
 - (b) The commercial collection, laundering or dry cleaning of wearing apparel that is contaminated with radioactive material.

Paragraph (15) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$15,000.00" from the paragraph and replacing it with "\$19,500.00" so that, as amended, paragraph (15) shall read as follows:

- (15) CATEGORY 9 ----- \$19,500.00
- (a) The possession of radioactive material or equipment contaminated or potentially contaminated with radioactive material as a result of operations involving the recovery of an element, compound or mixture from ores not subject to licensure because of the radioactive material content of the ore.
 - (b) Facilities that possess radioactive material as a result of operations (not directly involving radioactive decontamination activities) involving recovery of materials or other manufacturing processes (not directly manufacturing radioactive items or products).

Paragraph (16) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$22,500.00" from the paragraph and replacing it with "\$27,000.00" so that, as amended, paragraph (16) shall read as follows:

- (16) CATEGORY 10 ----- \$27,000.00
- (a) Facilities storing radioactive material, contaminated equipment and/or potentially contaminated equipment for transfer to authorized recipients as a service to the nuclear industry.
 - (b) Possession and refurbishment of contaminated equipment and/or potentially contaminated equipment that has been used at nuclear power plants.

Paragraph (17) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$30,000.00" from the paragraph and replacing it with "\$36,000.00" so that, as amended, paragraph (17) shall read as follows:

- (17) CATEGORY 11 ----- \$36,000.00
- (a) The collection, transfer, sorting and/or brokerage of radioactive material as sealed source, residue, product or as material in or on equipment; and/or

The decontamination of products and/or equipment containing radioactive material and/or contaminated with radioactive material; and/or

The possession, storage and incineration of radioactive material or items contaminated with radioactive materials.
 - (b) On site possession and storage of radioactive material and/or equipment contaminated with radioactive material as a result of operations involving the recovery of an element, compound or mixture from ores subject to licensure because of the radioactive material content of the ore or concentration of the radioactive material during the processing of the ore.

- (c) Facilities involved in the manufacture of product lines containing radioactive material in the manufactured product.
- (d) Possession of radioactive material for processing. This material may exist in ores, concentrates, compounds or metals.
- (e) The possession of multi-curie quantities of unsealed radioactive material either as waste or for further processing and/or conversion into specific marketable products.
- (f) Operations involving the fabrication of sealed sources or manufacture of compounds for distribution to other specific or general licensees.
- (g) The possession and use of radioactive material in a sealed source for irradiation of materials in which the source is exposed for irradiation purposes (non self-contained irradiators).

Paragraph (18) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$375,000.00" from the paragraph and replacing it with "\$450,000.00" so that, as amended, paragraph (18) shall read as follows:

- (18) CATEGORY 12 ----- \$450,000.00
- (a) The application for and/or operation of a low-level radioactive waste disposal facility.
 - (b) The maximum length of reviewing time (the period of time when there are no outstanding unanswered questions) after receipt of a new application and the appropriate fee for a Category 12 specific license and the issuance of a license is 60 months.

Paragraph (19) of Rule 0400-20-10-.31 Fees for Licenses is amended by deleting "\$150.00" from the paragraph and replacing it with "\$200.00" so that, as amended, paragraph (19) shall read as follows:

- (19) CATEGORY 13 ----- At least \$200.00 not greater than \$375,000.00
- The application, use or possession of radioactive material for uses or procedures not specifically included in any other category.
- The fee shall be determined on a case-by-case basis.
- The determination shall be based on an analysis of the hazard, the scope of the difficulty encountered in the review process and the specifics of the activity pursuant to the categories established in paragraphs (6) through (18) of this rule.

Rule 0400-20-10-.31 Fees for Licenses is amended by adding paragraph (20) so that, as amended, paragraph (20) shall read as follows:

- (20) CATEGORY FIXED NUCLEAR FACILITIES ----- Actual cost of program
- The Department shall set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material. The amount of fees collected shall not exceed the actual expenses that arise from emergency planning and implantation and environmental surveillance activities.

Chapter 0400-20-10
Licensing and Registration

New Rules

Chapter 0400-20-10 Licensing and Registration is amended by adding 0400-20-10-.34 that shall have the title Supplemental Fees for the Calendar year 2013 and contains the following:

0400-20-10-.34 Supplemental Fees for Calendar Year 2013

(1) Purpose

Adequate funds are required to facilitate the proper administration of The Radiological Health Service Act and The Medical Radiation Inspection Safety Act. Failure to properly administer these acts threatens the health and safety of the citizens of the state. Operating revenue for the administration of these acts is collected on a calendar year basis. Projected revenue needs of the Division in 2013 cannot be met by current registration and licensing fees. Rulemaking to increase 2013 fees cannot be completed prior to the first assessment date, January 1, 2013. Therefore, one time supplemental fees are hereby established to provide the Division with additional revenue during Calendar Year 2013. Division invoices will establish due dates for payment of these supplemental fees.

(2) Supplemental Fees Schedules

(a) In addition to the fees established in paragraph (3) of Rule 0400-20-10-.24 Registration, persons subject to registration anytime during Calendar Year 2013 shall pay a supplemental fee to be determined according to Schedule I of this paragraph:

SCHEDULE I

Class I Equipment	\$20.00 per tube
Class II Equipment	\$45.00 per tube
Class III Equipment	\$66.00 per tube
Class IV Equipment	\$90.00 per tube
Class V Equipment	\$180.00 per tube
Class VI Equipment	\$270.00 per tube
Class VII Equipment	\$600.00 per tube
A person providing inspection services under paragraph (4) of Rule 0400-20-10-.27	\$250.00
A person providing assembly/installation/servicing	\$250.00
A person providing inspection services under subparagraph (3)(f) of Rule 0400-20-10-.24	\$850.00
A person providing assembly/installation/servicing under subparagraph (3)(f) of Rule 0400-20-10-.24	\$850.00

- (b) In addition to the fees established in paragraphs (6) through (19) of Rule 0400-20-10-.31 Fees for Licenses, persons subject to licensure anytime during Calendar Year 2013 shall pay a supplemental fee to be determined according to Schedule II of this paragraph:

SCHEDULE II

Category GL	\$200.00
Category 1	\$75.00
Category 2	\$250.00
Category 3	\$270.00
Category 4	\$450.00
Category 5	\$630.00
Category 6	\$1,800.00
Category 7	\$1,200.00
Category 8	\$3,375.00
Category 9	\$4,500.00
Category 10	\$4,500.00
Category 11	\$6,000.00
Category 12	\$125,000.00
Category 13	At least \$50.00 and not greater than \$125,000.00

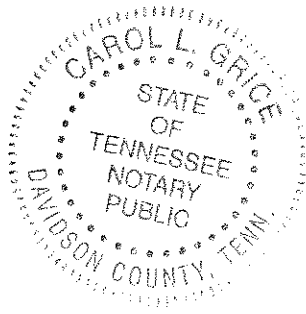
The Category 13 supplemental fee shall be determined on a case-by-case basis. The determination shall be based on an analysis of the hazard, the scope of the difficulty encountered in the review process and the specifics of the activity, following the categories established in paragraphs (6) through (19) of Rule 0400-20-10-.31.

Category Fixed Nuclear Facilities

Actual expenses that arise from emergency planning and implantation and environmental surveillance activities

Authority: T.C.A. §§ 68-202-203 and 68-202-206.

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: 11/26/12

Signature: Debra G. Shults

Name of Officer: Debra G. Shults

Title of Officer: Director

Subscribed and sworn to before me on: 11/26/12

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

Department of State Use Only

Filed with the Department of State on: 11/26/12

Tre Hargett
Secretary of State

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