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RILEY C. DARNELL
Secretary of State

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PREFACE

The Tennessee Administrative Register (T.A.R) is an official publication of the Tennessee Department of State. The *T.A.R.* is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The *T.A.R.* contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Commerce and Insurance, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

Emergency Rules are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the *T.A.R.* after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

Proposed Rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the *T.A.R.*, the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the *T.A.R.* of the following month.

Public Necessity Rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the *T.A.R.* Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

Wildlife Proclamations contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the *T.A.R.*, they are not published in the official compilation-Rules and Regulations of the State of Tennessee.

Subscription Orders - The subscription rate, payable in advance, is \$ 50 per year. An order form may be found in the back of each issue of the *Tennessee Administrative Register*.

Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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ANNOUNCEMENTS

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL'S GUIDELINES FOR EVALUATION OF PROPOSED REGULATORY OR ADMINISTRATIVE ACTIONS TO AVOID UNCONSTITUTIONAL TAKINGS OF PRIVATE PROPERTY

I. PURPOSE

These guidelines are submitted by the Office of the Attorney General pursuant to Chapter 924 of the Public Acts of 1994 (codified at T.C.A. § 12-1-201, *et seq.*). Section 4 of the Act requires the Attorney General to develop guidelines to assist state agencies in the identification and evaluation of government actions that may result in an unconstitutional taking of private property, in order to avoid an unnecessary burden on the public treasury and unwarranted interference with private property rights. The guidelines establish a basic framework for agencies to use in their internal evaluations of the takings implications of administrative and regulatory policies and actions. The guidelines do not prevent an agency from making an independent decision about proceeding with a specific policy or action which the decisionmaker determines is authorized by law.

These guidelines are intended solely as internal and predecisional management aids for agency decisionmakers and should not be construed as an opinion by the Attorney General on whether a specific action constitutes a taking. A private party shall not be deemed to have a cause of action against an agency for failure to follow any suggested procedures contained in the guidelines.

II. SCOPE

An agency should evaluate, for their takings implications, its administrative and regulatory policies and actions that affect, or may affect, the use or value of private real property in accordance with the framework established in these guidelines, including, but not limited to, regulations that propose or implement licensing, permitting or certification requirements, conditions or restrictions otherwise imposed by an agency on private property use, and any actions relating to or causing the physical occupancy or invasion of private property. These guidelines are limited to examination of takings of private real property and are not intended to govern or affect issues such as validity of searches or investigative or discovery demands which are controlled by other statutory and constitutional law.

The following policies and actions are excluded from evaluation under these guidelines:

1. The exercise of the power of eminent domain;
2. The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;

3. Orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute; and
4. The discontinuation of government programs.

Examples of agency actions that would be excluded under these guidelines include, but are not limited to, tax enforcement and collection activities pursuant to T.C.A. § 67-1-1401, *et seq.*, or other authority.

III. GENERAL PRINCIPLES

A. Constitutional and Statutory Framework

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. Article 1, Section 21 of the Tennessee Constitution provides that “[n]o man’s particular services shall be demanded, or property taken, or applied to public use, . . . without just compensation. . . .” The government may not, therefore, take property except for public purposes within its constitutional authority and only upon payment of just compensation.

The State has historically used its power of eminent domain under T.C.A. § 29-16-101, *et seq.* to acquire private property for a public purpose, such as a highway or recreation area, and in so doing has compensated property owners through a formal condemnation proceeding. The government, however, may also become liable for payment of just compensation to private property owners without the initiation of formal proceedings, when private property has either been physically occupied or invaded by the government on a permanent or temporary basis, or so affected by governmental regulation as to have been effectively taken despite the fact the government has neither physically invaded, confiscated nor occupied the property. In contrast to the formal exercise of eminent domain, the private property owner can obtain compensation by filing an “inverse condemnation” suit.

B. Nature of a Taking

A taking of private property rights may occur when permanent or temporary government actions result in the physical occupancy of property, the physical invasion of property, either directly or indirectly (see discussion in B. 2. below), or the regulation of property.

1. Physical Occupancy

As a general rule, a physical occupation of property by the government which is permanent is a taking, regardless of how slight the occupancy, the minimal economic impact on the property owner or whether the government action achieves an important public benefit. Aside from formal condemnation exercises, examples of physical occupancy takings include permanent utility easements and access easements. In some circumstances, however, even a temporary access easement may be deemed to be a physical taking. See discussion in B. 2. below.

2. Physical Invasion

The concept of permanent physical occupation does not necessarily require that in every instance the occupation be exclusive or continuous and uninterrupted. Physical invasions of property may also give rise to a taking where the invasions are of a recurring and substantial nature, or of finite duration, and thereby amount to temporary takings. Examples of physical invasion takings may include, among others, flooding and water related intrusions resulting from government projects, access easements, and aviation easement intrusions. The last example is not necessarily limited to direct overflights, but may result where there is continuous interference, through noise, pollution or vibration, with the beneficial use and enjoyment of property.

3. Regulatory Takings

Land use regulations that affect the value, use, or transfer of private property may constitute a taking if the regulations are adjudged to go too far. The greater the deprivation of use, the greater the likelihood that a taking will be found.

While there is no set formula for determining when government action constitutes a taking, an agency should consider the following criteria:

- a. Whether the policy or action will substantially advance a legitimate public purpose of the enabling statute, where the policy or action is in furtherance of obligations imposed or authorized by statute. If the regulation fails to substantially advance a legitimate state interest, or no nexus exists between the asserted government purpose and the regulation, a taking may be found.
- b. Whether the regulation denies the landowner all economically viable use of his property or substantially interferes with his reasonable investment-backed expectations, and the regulation goes beyond the government's powers under common law nuisance doctrine.
- c. If the regulation advances a legitimate public purpose, but is not reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Regulation of an individual's property that conditions approval of a permit/development on the dedication of some property to public use must not be disproportionate to the degree to which the individual's property use is contributing to the overall problem. The less direct, immediate and demonstrable the contribution of the property-related activity to the harm to be addressed, the greater the risk that a taking will be found.
- d. The degree to which a regulatory action closely resembles, or has the effect of, physical invasion or occupation of property. For example, an intended policy or action that totally abrogates an essential property interest, such as the right to exclude others by imposing an access easement, may, in certain circumstances, constitute a taking. See discussion in B. 2. above and C. 1. below.

C. Special Situations and Suggested Procedures

When implementing a regulatory policy or action and evaluating the takings implications of that policy or action, agencies should consider the following special factors and suggested procedures:

1. Permitting and Certification Programs

The programs of many agencies require private parties to obtain permits or certification before making specific uses of, or acting with respect to, private property. An agency may place conditions on the granting of such permits or certification, or deny the same, without necessarily effecting a taking for which compensation is due, however, the agency should first consider the following factors in determining whether a taking may result:

- a. Whether the government action will deprive the owner of essentially all economically viable or productive use of his property (see discussion below in C. 2. regarding economic impact of regulation); and
- b. Whether the landowner's proposed use of the property was not prohibited or considered a public nuisance at the time the owner acquired title to the property and, therefore, the condition or permit denial interferes with the owner's reasonable investment-backed expectations; and
- c. Whether the condition imposed by the government will result in a permanent physical occupation or invasion of the property, such as an access easement; and

- d. Whether a condition that requires a dedication of property to public use is reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Where public health and safety is the asserted regulatory purpose, then the health and safety risk posed by the property use must be identified with as much specificity as possible and should be real and substantial, and not merely speculative.

2. Assessing Economic Impact of the Regulation as Applied

In assessing whether a proposed policy or action may effect a taking of private property, an agency may want to consider the economic impact of a regulation by examining the following factors:

- a. The character and present use of the property, as well as the character and anticipated duration of the proposed or intended government action; and
- b. The likely degree of economic impact on all identified property and economic interests. A mere diminution in the value of the property to be regulated by the government's denial of the highest and best use of the property will not generally, by itself, amount to a taking (but see discussion below in C. 3. regarding the "parcel as a whole"); and
- c. Whether the proposed policy or action carries benefits to the private property owner that offset or otherwise mitigate the adverse economic impact of the proposed policy or action; and
- d. Whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

3. The "Parcel as a Whole" Analysis

In determining the economic impact of a proposed or intended government action, an agency should consider the impact on the "parcel as a whole," and not merely the part of the parcel that is subject to regulation. Generally, if an owner has been denied economic use of a segment of a parcel, but retains viable economic use of other segments of the same parcel, a taking may not result.

Paul G. Summers
Attorney General & Reporter

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 13.50 per cent.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST**

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of September, 2000 is 9.75 per cent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the published rate is 5.75 per cent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P. L. 96-221 as amended by P. L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

GOVERNMENT OPERATIONS COMMITTEES**ANNOUNCEMENT OF PUBLIC HEARINGS**

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of July, 2000. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-01	July 10, 2000	0800 Dept of Labor Division of Boiler and Elevator Inspection Elevator Safety Board	Proposed Rules	New Rules Amendments	<p>Chapter 0800-3-4 New Elevators, Dumbwaiters, and Escalators</p> <p>0800-3-4-.10 Adoption of Elevator Safety Code Amendments and Interpretations</p> <p>0800-3-4-.01 Definitions</p> <p>0800-3-4-.02 General Requirements</p> <p>0800-3-4-.03 Design, Installation and Alterations</p> <p>0800-3-4-.04 Inspection and Tests</p> <p>0800-3-4-.05 Operating Permits</p> <p>0800-3-4-.06 Qualifications and Licensing of Inspectors</p> <p>0800-3-4-.07 Elevator, Dumbwaiter and Escalator Accidents</p> <p>0800-3-4-.08 Appeals and Amendments</p> <p>0800-3-4-.09 Specifications for Tests and Inspections</p> <p>Chapter 0800-3-6 Special Purpose Personnel Elevators</p> <p>0800-3-6-.01 Safety Standards</p> <p>Chapter 0800-3-7 Sewer Lift Station, Personnel Elevators</p> <p>0800-3-7-.22 Wiring Methods</p> <p>Chapter 0800-3-8 Aerial Passenger Tramways, Lifts, Surface Lifts And Tows</p> <p>0800-3-8-.01 Safety Standards</p> <p>Chapter 0800-3-9 Operation Under Emergency Conditions</p> <p>0800-3-9-.01 Safety Standards</p> <p>Chapter 0800-3-10 Stairway Inclined and Vertical Wheelchair Lifts</p> <p>0800-3-10-.01 Fees</p> <p>Chapter 0880-3-12 Stairway Inclined and Vertical Wheelchair Lifts For Disabled Persons</p> <p>0800-3-12-.01 Safety Standards</p> <p>Chapter 0800-3-5 Existing Elevators, Dumbwaiters, and Escalators</p>	<p>Mark P. Reineke General Counsel TN Dept of Labor and Workforce Development TN Twr, 26th Fl 312 8th Ave, N Nashville, TN 37243-0662 (615) 741-0851</p>	November 28, 2000
07-02	July 10, 2000	1660 Wildlife Resources Commission	Rulemaking Hearing Rules	Amendment Repeals	<p>Chapter 1660-1-8 Rules and Regulations of Hunts</p> <p>1660-1-8-.03 Fees For Hunting ---- Wildlife Management Areas</p>	<p>Sheryl Holtam, Staff Attorney TN Wildlife Resources Agency P.O. Box 40747 Nashville, TN 37204 781-6606</p>	September 23, 2000

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-03	July 13, 2000	0400 Dept of Environment and Conservation Solid Waste Management	Rulemaking Hearing Rules	New Rule	<i>Chapter 1200-1-18</i> <i>Lead-Based Paint Abatement</i> 1200-1-18-.01 Lead-Based Paint Abatement	Gerald Ingram Solid Waste Management 5 th Fl L&C Twr 401 Church St Nashville TN 37243 615-532-0850	September 26, 2000
07-04	July 25, 2000	0080 Dept Of Agriculture Division Of Forestry	Emergency Rules	New Rules	<i>Chapter 0080-7-1</i> <i>General</i> 0080-7-1-.01 Applicability and Scope 0080-7-1-.02 Definitions 0080-7-1-.03 Natural Resources 0080-7-1-.04 Camping 0080-7-1-.05 Closing Areas 0080-7-1-.06 Transportation 0080-7-1-.07 Commercial Operations 0080-7-1-.08 Groups and Organizations 0080-7-1-.09 Abandoned and Unattended Property 0080-7-1-.10 Disorderly Conduct 0080-7-1-.11 Penalties and Assistance	Patricia Clark, General Counsel Dept of Agriculture P.O. Box 406627 Nashville, TN 37204 615-837-5093	July 25, 2000 through Jan 6, 2000
07-05	July 25, 2000	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville, TN 37243-1538 (615)532-0916	October 8, 2000
07-06	July 25, 2000	1240 Dept of Human Services Family Assistance Division	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50</i> <i>Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson, Assistant General Counsel TN Twr, 26th Fl 312 8 th Ave, N Nashville, TN 37243 (615) 741-9534	October 8, 2000
07-08	July 26, 2000	1155 Board of Registration in Podiatry	Rulemaking Hearing Rules	Amendments	<i>Chapter 1155-2</i> <i>General Rules and Regulations Governing the Practice of Podiatry</i> 1155-2-.15 Disciplinary Actions and Civil Penalties	John Fitzgerald, Office of General Counsel, 26th Fl, William R. Snodgrass TN Twr, 312 8th Ave N, Nashville, TN 37247-0120 615-741-1611	October 9, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-09	July 26, 2000	1640 Student Assistance Corporation	Proposed Rules	Amendments	Chapter 1640-1-13 Minority Teaching Fellows Program 1640-1-13-.05, Loan Amount and Terms	Ron Gambill Executive Director TN Student Assistance Corp. Suite 1950, Pkwy Twrs 404 James Robertson Pkwy Nashville, TN 37243-0820 (615) 741-1346	November 28, 2000
07-10	July 26, 2000	1240 Dept of Human Services Division of Community and Field Services	Rulemaking Hearing Rules	Amendments	Chapter 1240-7-1 Low Income Energy Assistance Program 1240-7-1-.01 Definitions 1240-7-1-.02 Eligibility Requirements 1240-7-1-.05 Benefit Levels Chapter 1240-7-2 Weatherization Assistance Program 1240-7-2-.01 Eligibility Requirements 1240-7-2-.02 Benefit Levels 1240-7-2-.04 Additional Program Requirements	Phyllis Simpson Assistant General Counsel Dept of Human Services TN Twr, 26 th Fl 312 8 th Ave N Nashville, TN 37243 (615) 741-9534	October 9, 2000
07-12	July 27, 2000	1200 Dept of Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Repeal and New Rules	Chapter 1200-8-11 Standards for Homes for the Aged 1200-8-11-.01 Definitions 1200-8-11-.02 Licensing Procedures 1200-8-11-.03 Disciplinary Procedures 1200-8-11-.04 Administration 1200-8-11-.05 Admissions, Discharges and Transfers 1200-8-11-.06 Personal Services 1200-8-11-.07 BldgStandards 1200-8-11-.08 Life Safety 1200-8-11-.09 Infectious and Hazardous Waste 1200-8-11-.10 Records and Reports 1200-8-11-.11 Resident Rights 1200-8-11-.12 Procedures for the Withholding of Resuscitative Services 1200-8-11-.13 Disaster Preparedness	Anita Van Tries Dept of Health Health Care Facilities 1 st Fl, Cordell Hull Bldg 425 Fifth Ave N Nashville, TN 37247-0508 615-741-7586	October 10, 2000
07-13	July 27, 2000	1200 TN Dept of Health Board For Licensing Health Care Facilities	Rulemaking Hearing Rules	New Rules	Chapter 1200-8-22 Alcohol and Other Drugs of Abuse Halfway House Treatment Facilities 1200-8-22-.01 Definitions 1200-8-22-.02 Licensing Procedures 1200-8-22-.03 Disciplinary Procedures 1200-8-22-.04 Administration	Robbie H. Bell OGC Dept of Health 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-741-1611	October 10, 2000

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-13					1200-8-22-.05 Admissions, Discharges, and Transfers 1200-8-22-.08 Life Safety 1200-8-22-.09 Infectious and Hazardous Waste 1200-8-22-.10 Records and Reports 1200-8-22-.11 Client Rights 1200-8-22-.12 Procedures For the 1200-8-22-.13 Disaster Preparedness		
07-14	July 27, 2000	1200 Dept of Health Division of Health Care Facilities	Rulemaking Hearing Rules	New Rules	Chapter 1200-8-28 Standards for HIV Supportive Living Facilities 1200-8-28-.01 Definitions 1200-8-28-.02 Licensing Procedures 1200-8-28-.03 Disciplinary Procedures 1200-8-28-.04 Administration 1200-8-28-.05 Admissions, Discharges, and Transfers 1200-8-28-.06 Basic HIV Supportive Living Services 1200-8-28-.07 Reserved 1200-8-28-.08 BldgStandards 1200-8-28-.09 Life Safety 1200-8-28-.10 Infectious and Hazardous Waste 1200-8-28-.11 Records and Reports 1200-8-28-.12 Resident Rights 1200-8-28-.13 Procedures for the Withholding of Resuscitative Services 1200-8-28-.14 Disaster Preparedness	Robbie H. Bell OGC Dept of Health 26th Fl, TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-741-1611	October 10, 2000
07-15	July 27, 2000	1200 Dept of Health Board For Licensing Health Care Facilities	Rulemaking Hearing Rules	Repeal and New Rules	Chapter 1200-8-20 Alcohol and Other Drugs of Abuse Prevention Program Facilities 1200-8-20-.01 Definitions 1200-8-20-.02 Licensing Procedures 1200-8-20-.03 Disciplinary Procedure 1200-8-20-.04 Administration 1200-8-20-.05 Admissions, Discharges, and Transfers 1200-8-20-.06 Basic Services 1200-8-20-.07 BldgStandards 1200-8-20-.08 Life Safety 1200-8-20-.09 Infectious and Hazardous Waste 1200-8-20-.10 Records and Reports 1200-8-20-.11 Participant Rights 1200-8-20-.12 Procedures For the Withholding of Resuscitative Services 1200-8-20-.13 Disaster Preparedness	Robbie H. Bell OGC Dept of Health 26th Fl, TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-741-1611	October 10, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-16	July 27, 2000	1200 Dept of Health Board For Licensing Health Care Facilities	Rulemaking Hearing Rules	Repeal and New Rules	Chapter 1200-8-19 <i>Alcohol and Other Drugs of Abuse</i> <i>DUI School Facilities</i> 1200-8-19-.01 Definitions 1200-8-19-.02 Licensing Procedures 1200-8-19-.03 Disciplinary Procedures 1200-8-19-.04 Administration 1200-8-19-.05 Admissions, Discharges, and Transfers 1200-8-19-.06 Basic Services 1200-8-19-.07 BlogStandards 1200-8-19-.08 Life Safety 1200-8-19-.09 Infectious and Hazardous Waste 1200-8-19-.10 Records and Reports 1200-8-19-.11 Client Rights 1200-8-19-.12 Procedures For the Withholding of Resuscitative Services 1200-8-19-.13 Disaster Preparedness	Robbie H. Bell OGC Dept of Health 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247- 0120 615-741-1611	October 10, 2000
07-17	July 27, 2000	1050 Board of Osteopathic Examination	Rulemaking Hearing Rules	Amendments	Chapter 1050-2 <i>General Rules and Regulations Governing the</i> <i>Practice of Osteopathy</i> 1050-2-.09 Officers, Consultants, Records, and Declaratory Orders 1050-2-.10 Licensure Discipline and Civil Penalties	John D. Fitzgerald OGC 26th Fl Snodgrass Twr 312 8th Ave N Nashville, TN 37247- 0120 615-741-1611	October 10, 2000
07-18	July 27, 2000	1050 Board of Osteopathic Examination	Rulemaking Hearing Rules	New Rules Amendment	Chapter 1050-2 <i>General Rules and Regulations Governing the</i> <i>Practice of Osteopathy</i> 1050-2-.18 Medical Record Retention Chapter 1050-3 <i>General Rules and Regulations Governing the</i> <i>Utilization of X-Ray Operators in Osteopathic</i> <i>Physicians' Offices</i> 1050-3-.03 Certification Requirements and Exemptions	John D. Fitzgerald OGC 26th Fl Snodgrass Twr 312 8th Ave N Nashville, TN 37247- 0120 615-741-1611	October 10, 2000
07-19	July 27, 2000	0480 Board of Dispensing Opticians	Rulemaking Hearing Rules	Amendments	0480-1-.15 Disciplinary Actions and Civil Penalties 0480-1-.19 Board Meetings, Officers, Consultants, Records, and Declaratory Orders	John D. Fitzgerald OGC 26th Fl Snodgrass Twr 312 8th Ave N Nashville, TN 37247- 0120 615-741-1611	October 10, 2000

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-20	July 31, 2000	1150 Board of Occupational and Physical Therapy Examiners Committee of Physical Therapy	Rulemaking Hearing Rules	Amendments	Chapter 1150-1 <i>General Rules Governing the Practice of Physical Therapy</i> 1150-1-.05 Procedures for Licensure Fees 1150-1-.06 Application Review, Approval and Denial 1150-1-.07 Examinations	John D. Fitzgerald OGC 26th Fl Snodgrass Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	October 14, 2000
07-23	July 31, 2000	1240 Dept of Human Services Division of Family Assistance	Rulemaking Hearing Rules	Amendments	Chapter 1240-1-19 <i>Continuing Responsibilities Food Stamp Program</i> 1240-1-19-.20 Replacement Of Lost/Stolen ATP Cards - Food Stamps Only (Reserved for Future Use) 1240-1-19-.21 Replacement Of Food Stamp Allotments	Phyllis A. Simpson Assistant General Counsel Dept of Human Services 26 th Fl TN Twr 312, 8 th Ave N Nashville, TN 37243 (615) 741-9534	October 14, 2000
07-26	July 31, 2000	1240 Dept of Human Services Division of Family Assistance	Rulemaking Hearing Rules	Amendments Repeals	Chapter 1240-1-2 <i>Financial Eligibility Requirements</i> 1240-1-2-.02 Household Concept - Food Stamps Only Chapter 1240-1-20 <i>Overpayments and Claims</i> 1240-1-20-.02 Intentional Program Violations Chapter 1240-1-3 <i>Non-Financial Eligibility Requirements</i> Chapter 1240-1-34 <i>AFDC - Foster Care</i>	Phyllis A. Simpson Assistant General Counsel Dept of Human Services 26 th Fl, TN Twr 312 8 th Ave N Nashville, TN 37243 (615) 741-9534	October 14, 2000
07-27	July 31, 2000	0880 Board of Medical Examiners' Committee on Physician Assistants	Rulemaking Hearing Rules	Amendments	Chapter 0880-3 <i>General Rules and Regulations Governing the Practice of a Physician Assistant</i> 0880-3-.12 Continuing Education 0880-3-.15 Disciplinary Grounds, Actions, Civil Penalties and Informal Settlements Chapter 0880-10 <i>General Rules and Regulations Governing the Practice of an Orthopedic Physician Assistant</i> 0880-10-.12 Continuing Education 0880-10-.15 Disciplinary Grounds, Actions and Civil Penalties	Robert J. Kraemer OGC Dept of Health 26th Snodgrass Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	October 14, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-28	July 31, 2000	0520 Bd of Education No disk for Rule filings	Proposed Rules	Amendments	0520-1-2 <i>Administrative Rules and Regulations</i> 0520-1-2-.03 Employment Standards	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Parkway Nashville, TN, 37243-1050 615) 532-3528	November 28, 2000
07-29	July 31, 2000	0520 Bd of Education No disk for Rule chapter	Proposed Rules	Amendment	Chapter 0520-1-2 <i>Administrative Rules and Regulations</i> 0520-1-2-.03 Employment Standards	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Parkway Nashville, TN, 37243-1050 615) 532-3528	November 28, 2000
07-32	July 31, 2000	1400 TN Corrections Institute	Proposed Rules	Amendments	Chapter 1400-1 <i>Minimum Standards for Local Correctional Facilities</i> 1400-1-.02 Basic Information 1400-1-.03 Glossary 1400-1-.04 Physical Plant 1400-1-.05 Administration/Management 1400-1-.08 Discipline 1400-1-.09 Sanitation/Maintenance 1400-1-.10 Food Services 1400-1-.14 Admissions, Records and Release 1400-1-.15 Hygiene 1400-1-.16 Supervision of Inmates 1400-1-.17 Classification	Roy C. Nixon, Executive Director TN Corrections Institute 500 Deaderick St 8th Fl, Andrew Jackson Bldg Nashville, TN 37243 615-741-3816	November 28, 2000
07-35	July 31, 2000	0520 Board of Education	Proposed Rules	Amendment	Chapter 0520-2-3 <i>Teacher Education and Licensure</i> 0520-2-3-.21 Effective Dates	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Parkway Nashville, TN, 37243-1050 615) 532-3528	November 28, 2000

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-36	July 31, 2000	0520 Board of Education	Proposed Rules	Amendment	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.06 Graduation, Requirement E	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Parkway Nashville, TN, 37243- 1050 615) 532-3528	November 28, 2000
07-37	July 31, 2000	0520 Board of Education	Proposed Rules	Amendment	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.06 Graduation, Requirement E	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Parkway Nashville, TN, 37243- 1050 615) 532-3528	November 28, 2000
07-38	July 31, 2000	0520 Board of Education	Proposed Rules	Amendments	<i>Chapter 0520-2-4 Licensure</i> 0520-2-4-.03 Interim License and Permit	Karen Weeks State Board of Education 9th Fl, Andrew Johnson Twr 710 James Robertson Parkway Nashville, TN, 37243- 1050 615) 532-3528	November 28, 2000
07-39	July 31, 2000	0450 Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	<i>Chapter 0450-1 General Rules Governing Professional Counselors</i> 0450-1-.06 Fees 0450-1-.07 Application Review, Approval, Denial, Interviews 0450-2 General Rules Governing Marital and Family Therapists 0450-2-.06 Fees 0450-2-.07 Application Review, Approval, Denial, Interviews	John Fitzgerald, OGC 26th Fl, Snodgrass Twr 312 8th Ave N, Nashville, TN 37247- 0120 615-741-1611	October 14, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-39, cont.					0450-3 General Rules Governing Clinical Pastoral Therapists 0450-3-.06 Fees 0450-3-.07 Application Review, Approval, Denial, Interviews		
07-40	July 31, 2000	0450 Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	Chapter 0450-1 General Rules Governing Professional Counselors 0450-1-.12, Continuing Education Chapter 0450-2 General Rules Governing Marital and Family Therapists 0450-2-.12, Continuing Education Chapter 0450-3 General Rules Governing Clinical Pastoral Therapists 0450-3-.12, Continuing Education	Robbie Bell, OGC 26th Fl, Snodgrass Twr 312 8th Ave N, Nashville, TN 37247- 0120 615-741-1611	October 14, 2000
07-41	July 25, 2000	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	Chapter 1200-1-13 <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville, TN 37243- 1538 (615)532-0916	October 8, 2000
07-42	July 31, 2000	0870 Massage Licensure Board	Rulemaking Hearing Rules	Amendments	Chapter 0870-1 <i>General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.01 Definitions 0870-1-.02 Practice Standards 0870-1-.04 Licensure And Provisional Licensure Process Fees 0870-1-.06 Licensure Renewal 0870-1-.09 Retirement and Reactivation 0870-1-.11 of Licensure 0870-1-.12 Continuing Education 0870-1-.13 Disciplinary Grounds, Actions, Civil Penalties, and Informal Settlements 0870-1-.16 Officers, Consultants, Records, and Declaratory Orders	Robbie Bell, OGC 26th Fl, Snodgrass Twr 312 8th Ave N, Nashville, TN 37247- 0120 615-741-1611	October 14, 2000

HEALTH FACILITIES COMMISSION - 0720**NOTICE OF BEGINNING OF REVIEW CYCLE**

Applications will be heard at the September 27, 2000 Health Facilities Commission Meeting except as otherwise noted.

*Denotes applications being placed on the Consent Calendar.

+Denotes applications under simultaneous review.

This is to provide official notification that the Certificate of Need applications listed below have begun their official 90-day review cycle effective July 1, 2000. The review cycle includes a 60-day period of review by the Division of Assessment and Planning within the Tennessee Department of Health or the Department of Mental Health and Mental Retardation. During this 60-day period, the Department of Health may hold a public hearing, if requested, with respect to each application and will conclude the period with a written report. Pursuant to Public Chapter 120, Acts of 1993, certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a 60-day review cycle, including a 30-day period of review by the Department of Health, Division of Assessment and Planning or the Department of Mental Health and Mental Retardation. Applications intended to be considered on the consent calendar, if any, are denoted by an asterisk.

Pursuant to T.C.A., Section 68-11-108(h)(1) effective April 5, 2000, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Tennessee Health Facilities Commission and serve a copy on the contact person no later than fifteen (15) days before the regularly scheduled Tennessee Health Facilities Commission meeting at which the application will be heard.

For more information concerning each application or its review cycle, you may contact the Tennessee Department of Health/ Division of Assessment & Planning (615/741-0244), their designee, or the Health Facilities Commission (615/741-2364).

NAME AND ADDRESS

DESCRIPTION

Plaza Surgery Center
979 East 3rd Street
Chattanooga (Hamilton Co.), TN 37403
Martin S. McKay – (423)—778-3286
CN0004-028

The establishment of an ambulatory surgical treatment center at 979 East 3rd Street in Chattanooga, TN 37403. The facility has previously operated as an outpatient surgery center under the license of Erlanger Medical Center.
\$ 7,170,000

TLC Laser Eye Center (Refractive I), Inc.
1265 Union Avenue
Memphis (Shelby Co.), TN 38104
Ansel L. Davis, Esquire – (615)—251-6726
CN0005-031

The establishment of an ambulatory surgical treatment center limited to laser refractive eye surgery at 1256 Union Avenue, Memphis, Tennessee.
\$ 990,000

American Drug Care, Inc.
4780 Summer Avenue, Suite 103
Memphis (Shelby Co.), TN 38122
John Hornberger – (901)—794-7911
CN0006-042

The establishment of a non-residential methadone treatment facility at 4780 Summer Avenue, Suite 103 in Memphis, Tennessee.
\$ 104,316.88

NAME AND ADDRESS	DESCRIPTION
Center for Behavioral Health of Nashville, Inc. 602 Gallatin Road, Suite 100 Nashville (Davidson Co.), TN 37206 Marylyn M. Pettit – (205)—985-4331 CN0006-043	The establishment of a non-residential methadone treatment facility to be located at 602 Gallatin Road, Suite 100, Nashville, Tennessee. \$ 181,777.41
Claiborne County Hospital 1850 Old Knoxville Road Tazewell (Claiborne Co.), TN 37879-0219 Michael Hutchins – (423)—626-1886 CN0006-046	The acquisition of a magnetic resonance imaging (MRI) scanner and the conversion of mobile MRI services to a fixed service at Claiborne County Hospital. \$ 1,546,500
G.I. Diagnostic and Therapeutic Center, L.L.C. 1310 Wolf Park Drive Germantown (Shelby Co.), TN 38138 William H. West – (615)—259-1450 CN0006-048	The relocation and expansion of the current ambulatory surgical treatment center (ASTC) of G. I. Diagnostic and Therapeutic Center, L.L.C. located at 1068 Cresthaven, Suite 300, in Memphis, Shelby County, Tennessee to 1310 Wolf Park Drive, Germantown, Shelby County, Tennessee. The new ASTC will expand from four (4) endoscopy/operating rooms to six (6) endoscopy/operating rooms and consist of approximately 12,600 square feet of space. \$ 2,928,000
Aspen Surgical, P.L.L.C. 2101 Merchants Row, Suite 3 Germantown (Shelby Co.), TN 38138 E. Graham Baker, Jr. – (615)—383-3332 CN0006-051	The establishment of an ambulatory surgical treatment center limited to plastic and reconstructive surgery located at 2101 Merchants Row, Suite 3, Germantown, Tennessee. The center will consist of approximately 2,000 square feet and will contain one operating room. \$ 1,217,921
Watauga Orthopaedics, P.L.C. 2410 Susannah Street Johnson City (Washington Co.), TN 37601 Jerry W. Taylor – (615)—726-1200 CN0006-053	The acquisition of a magnetic resonance imaging unit and the initiation of MRI services at the orthopaedic practice of Watauga Orthopaedics, P.L.C. located at 2410 Susannah Street, Johnson City, Washington County, Tennessee. \$ 1,404,314
Middle Tennessee Treatment Center 2410 Charlotte Avenue Nashville (Davidson Co.), TN 37203-1517 Jerry W. Taylor – (615)—726-1200 CN0006-054	The relocation and expansion of Middle Tennessee Treatment Center, a non-residential methadone treatment facility, currently located at 1800 Hayes Street in Nashville, Tennessee to 2410 Charlotte Avenue in Nashville, Tennessee. \$ 814,500

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

(For the text of the Emergency rules see issue of T.A.R. cited)

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules in response to the recent diagnoses of pseudorabies in the swine population on multiple premises in west Tennessee and to protect against further importations of infected swine, chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 6 T.A.R. (June 2000) - filed May 21, 2000; effective through November 12, 2000. (05-31)
- 0520 - Department of Education - Emergency rules providing for alternative licensure for teachers under an Interim E License. chapter 0520-2-4 Licensure, 6 T.A.R. (June 2000) - Filed May 15, 2000; effective through October 28, 2000. (05-08)

TENNESSEE DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF FORESTRY

CHAPTER 0080-7-1 GENERAL

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. § 4-5-208, the Tennessee Department of Agriculture is promulgating emergency rules to address the immediate concern that substantial and long-term damage is being inflicted upon Tennessee's State Forests by the excessive and indiscriminate use of off-road vehicles. Likewise, these emergency rules authorize rapid response by the Division of Forestry to protect State Forests during the fire season ahead. Continuing drought conditions in many areas are anticipated to make this fire season especially volatile.

These rules authorize the Division of Forestry to regulate activities within State Forests and to close roads, trails and other areas when public safety and the protection of the State Forests require such actions.

For a copy of these proposed new rules, contact: Ken Arney, State Forester, Tennessee Department of Agriculture, Ellington Agricultural Center, P.O. Box 40627, Nashville, TN 37204, telephone number 615-837-5411.

Ken Arney, State Forester
Tennessee Department of Agriculture

DIVISION OF FORESTRY**TABLE OF CONTENTS**

0080-7-1-.01	Applicability and Scope	0080-7-1-.07	Commercial Operations
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0080-7-1-.04	Camping	0080-7-1-.10	Disorderly Conduct
0080-7-1-.05	Closing Areas	0080-7-1-.11	Penalties and Assistance
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0080-7-1-.01 APPLICABILITY AND SCOPE

Tennessee State Forests belong to the people of the State of Tennessee and are for the use of the public. All visitors are welcome. To prevent the abuse and misuse of the privileges, natural resources and facilities provided, the following rules and regulations governing public use are adopted.

Authority: *T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)*

0080-7-1-.02 DEFINITIONS

- (1) "Commissioner" means the commissioner of agriculture;
- (2) "Department" means the department of agriculture;
- (3) "District Forester" means the official in charge of a Forestry District or their representative;
- (4) "Division" means the division of forestry within the department;
- (5) "Multiple use" means the management and use of forests such that a variety or mix of natural resource benefits are derived from that land. "Multiple use" includes, but is not limited to, a combination of timber production, demonstration, watershed protection, wildlife management, recreation, and aesthetics;
- (6) "Natural Resource" includes but is not limited to: fruit, timber, grass, rocks, roots, flowers, leaves, minerals, water, artifacts, and soil;
- (7) "State forester" means the director of the division of forestry or his representative;
- (8) "State forests," means those lands owned by the state and/or administered under the jurisdiction of the division.

Authority: *T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)*

0080-7-1-.03 NATURAL RESOURCES

- (1) Cutting, removal, gathering, planting, destruction or damaging of any natural resource is prohibited on any State Forest; provided, however, such actions may be carried out with the written authorization of the District Forester or under the District Forester's supervision.

- (2) The collection of plants, rocks, minerals, animal life, botanical specimens or other natural objects is prohibited. Provided however, persons officially representing reputable scientific or educational institutes may obtain authorization for such collecting from the District Forester were the objects collected will become part of a permanent collection to the public and the scientific community.

Authority: *T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)*

0080-7-1-.04 CAMPING

- (1) The District Forester may restrict camping in any State Forest, including locations and the times camping is allowed. This includes emergency restrictions when, in the opinion of the District Forester, conditions in an area normally open to the public are such as to endanger natural resources or the public.
- (2) Camping and the use of trailers or other camper units are permitted only at designated locations. The District Forester may issue written permits to persons desiring to camp in backcountry, or other isolated sections of a forest area. The District Forester may designate portions of a forest area in which such permits will not be required by marking on a map which shall be available for public inspection in the District Office.
- (3) Quiet shall be maintained in all campgrounds between the hours of 10:00 p.m. and 6:00 a.m.
- (4) The gathering of wood for use as fuel in campgrounds or picnic areas is limited to dead material on the ground, except where such gathering is prohibited by the District Forester by the posting of appropriate signs.
- (5) Camping equipment must be completely removed and camping sites cleaned and returned to their natural condition by campers before leaving.

Authority: *T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)*

0080-7-1-.05 CLOSING ROADS, TRAILS, AND OTHER AREAS

- (1) The District Forester may establish a reasonable schedule of visiting hours for all portions of a Forest area.
- (2) The District Forester may close or restrict the public use of roads, trails and any or all portion of a State Forest when necessary for the protection of the area or the safety and welfare of visitors or property.
- (3) All persons shall observe and abide by the officially posted signs designating closed areas and visiting hours.
- (4) Tampering with posted signs or barricades, traveling on closed or restricted use roads, driving around or through signs or barricades marking closed or restricted areas is a Class A misdemeanor, punishable as provided by general law.

Authority: *T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., T.C.A. §39-17-108, Executive Order No. 41 (February 4, 1991)*

0080-7-1-.06 TRANSPORTATION: SADDLE AND PACK ANIMALS AND OFF-ROAD VEHICLES

- (1) The District Forester may designate areas for use by certain types of transportation. Unauthorized off road travel by any means of transportation is prohibited.
- (2) Riders of saddle and pack animals are;
 - (a) Permitted only on those trails or routes designated for their use, unless the District Forester has issued a permit authorizing cross-county travel;
 - (b) Not permitted on paved or main-traveled roadways except where necessary for ingress to and egress from trails or privately owned property;
 - (c) Required to have, in their possession, evidence of a negative test for Equine Infectious Anemia. Page 4 of 7 pages
- (3) Riders of motorcycles, trail bikes, all-terrain vehicles, bicycles and other off-road vehicles:
 - (a) May use only the unpaved roadways maintained by the Forestry Division unless they and their vehicle are licensed for the public roadways;
 - (b) Must have all equipment in good working order with properly functioning mufflers and spark arresters;
- (4) Safety helmet are required for drivers and passengers of vehicles covered by T.C.A. § 55-9-302.
- (5) The District Forester may designate certain areas for the use of off-road vehicles. These areas will be posted for such use and may be used only during daylight hours. Use of off-road vehicles in any area of a State Forest except on unpaved roadway maintained by the Forestry Division or in areas posted for use by off-road vehicles is strictly prohibited.

Authority: T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., T.C.A. § 44-2-1302, T.C.A. § 55-9-302, T.C.A. §§ 4-3-201 et seq., Executive Order No. 41 (February 4, 1991)

0080-7-1-.07 COMMERCIAL OPERATIONS

- (1) Engaging in a business or commercial solicitation of any kind within a State Forest is prohibited without a written permit from the District Forester or a fully executed contract with the Department of Agriculture, Forestry Division.

Authority: T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)

0080-7-1-.08 GROUPS AND ORGANIZATIONS

- (1) Public meetings, assemblies, gatherings, demonstrations, and other events are permitted within state forests on lands that are open to the general public provided a permit has been issued by the District Forester.
- (2) Any application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, and estimate of the number of persons expected to attend, and a statement of equipment and facilities to be used.

Authority: T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)

0080-7-1-.09 ABANDONED AND UNATTENDED PROPERTY

- (1) Abandoning vehicles or other personal property is prohibited in a State Forest. Leaving any vehicle or other personal property unattended for longer than 24 hours, without prior permission from the District Forester, constitutes abandonment. The District Forester may impound abandoned property.
- (2) In the event unattended property interferes with a safe and orderly management of the State Forest, the District Forester may impound it at any time.

Authority: T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)

0080-7-1-.10 DISORDERLY CONDUCT AND VANDALISM

- (1) Disorderly conduct, as defined in T.C.A. §39-17-305 and vandalism as defined in T.C.A. §39-14-408 are prohibited in a State Forest.

Authority: T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)

0080-7-1-.11 PENALTIES AND ASSISTANCE

- (1)
 - (a) Violation of these rules is a misdemeanor and punishable under the general law relating to misdemeanors.
 - (b) The District Forester may call upon any law enforcement officer or agencies and state departments and agencies for assistance in enforcing these rules and regulations.
 - (c) Division of Forestry personnel will likewise provide assistance, when requested, to any law enforcement officer or agency or state department or agencies in enforcing state law or in the enforcement of the rules and regulations of other departments

Authority: T.C.A. §§4-3-201 et seq., T.C.A. §§11-1-101 et seq., T.C.A. §§11-4-101 et seq., Executive Order No. 41 (February 4, 1991)

The emergency rules set out herein were properly filed in the Department of State on the 25th day of July, 2000, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 6th day of January, 2000. (07-04)

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PROPOSED RULES

TENNESSEE CORRECTIONS INSTITUTE - 1400

CHAPTER 1400-1 MINIMUM STANDARDS FOR LOCAL CORRECTIONAL FACILITIES

Presented herein are proposed rules of the Tennessee Corrections Institute submitted pursuant to T.C.A. 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Corrections Institute to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in the Office of the Tennessee Corrections Institute on the 8th Floor of the Andrew Jackson Building located at 500 Deaderick Street, Nashville, Tennessee 37243 and in the Department of State, Fifth Floor, James K. Polk Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule contact: Carolyn Fiedler, 500 Deaderick Street, 8th Floor, Andrew Jackson Building, Nashville, Tennessee 37243, Tennessee Corrections Institute, 615-741-3816.

The text of the proposed rules is as follows:

AMENDMENTS

Rule 1400-1-.02, Basic Information, Section 4(a) is amended by deleting the last 6 lines of the paragraph as it refers to juvenile facilities so that as amended the rule shall read:

- (4) Validity: In determining the application of these minimum jail standards, the Tennessee Corrections Institute Board of Control has enacted the following:
 - (a) Standards contained herein shall apply to specific types of local correctional facilities as noted at the end of each standard. For the purpose of this document, primarily adult jails or workhouses which house inmates for over seventy-two (72) hours will be considered Type I; primarily adult jails which house prisoners for no more than seventy-two (72) hours will be considered Type II; primarily adult jails which house inmates for no more than twelve (12) hours will be considered Type III.

Authority: T.C.A. §41-4-140.

1400-1-.03, Glossary, Section 42 is amended by deleting “November, 1982.” and adding “June, 2000.” so that as amended the rule should read:

- (42) New Facilities - Jails built after June, 2000.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 4 is amended by deleting “48” persons and adding “64” persons and deleting “50” square feet and adding “25” square feet and adding dayroom requirements. It is also amended by deleting the second paragraph in its entirety that starts “In new jails, dormitories shall be designed to...” so that as amended the rule should read:

- (4) In new workhouses, dormitories shall not be designed to accommodate more than sixty-four (64) persons. A minimum of twenty-five (25) square feet of clear floor space for each occupant must be provided in the housing area with a ceiling elevation of not less than eight (8) feet. This type of housing shall be used only for minimum security inmates.

In existing jails and workhouses, dormitories shall provide twenty-five (25) square feet of floor space per occupant, exclusive of the area occupied by the bunks, and a ceiling height of not less than eight (8) feet. If an inmate who occupies a dormitory in an existing facility has regular access to additional living areas, the additional area may be added on a pro rata basis to the square footage available to an inmate.

A dayroom is required with thirty-five (35) square feet per inmate for the maximum number of users at one time.

Applies to Type I.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 6, is amended to delete “one (1) toilet and washbasin to every eight (8) inmates” and add “one (1) toilet and washbasin to every twelve (12) inmates and one (1) toilet and washbasin for every eight (8) female inmates...” and add “Two (2) urinals will equal one (1) toilet” so that as amended the rule shall read:

- (6) All facilities shall provide operable toilets and washbasins to inmates on a ratio of at least one (1) toilet and washbasin to every twelve (12) male inmates and one (1) toilet and washbasin for every eight (8) female inmates and one (1) toilet and washbasin accessible to occupants of any single-occupancy cell without their having to leave their cell. Two (2) urinals may equal one (1) toilet.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 8(d), is amended by adding “a minimum of twelve (12) inches off of the floor” and “no higher than” so that as amended the rule shall read:

- (d) Concrete bed, a minimum of twelve (12) inches off of the floor and no higher than sixteen (16) inches off of the floor, with rounded edges.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 9(e), is amended by adding “a minimum of twelve (12) inches off of the floor” and “no higher than” so that as amended the rule shall read:

- (e) New facilities shall also provide in this cell a concrete bed, a minimum of twelve (12) inches off of the floor and no higher than sixteen (16) inches off of the floor with rounded edges.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 9(g), is amended by adding “(g) This standard applies only to jails that have construction plans reviewed and approved by the Tennessee Corrections Institute after June 1, 2000.” so that as amended the rule shall read:

- (g) This standard applies only to jails that have construction plans reviewed and approved by the Tennessee Corrections Institute after June 1, 2000.

Applies to Types I,II,III, and IV.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 17, is amended by deleting “Drinking fountains,” and adding “Access to” and deleting “of new facilities.” and deleting “it will not be necessary to add drinking fountains but” so that as amended the rule shall read:

- (17) Access to potable water, shall be located in all housing areas. In existing facilities, if the water from washbasins is potable, drinking cups must be made available.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 19, is amended by deleting “for electric locks to be manually operated.” and adding “that any electric locks have capability for manual operation.” so that as amended the rule shall read:

- (19) Each facility shall provide that any electric locks have the capability for manual operation.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.04, Physical Plant, Section 24, is amended by adding “and approval.” so that as amended the rule shall read:

- (24) Plans for any new facility construction or renovation shall be in compliance with minimum standards recorded herein and be submitted to the Tennessee Corrections Institute and the State Fire Marshal’s Office for review and approval.

In planning a new facility it shall be necessary, at the outset, to determine clearly the function and purpose which the facility will serve. In essence, define whether or not its function will be for temporary holding or an institution to which convicted persons are sent. Its primary function may encompass both of these functions.

A plan for operating the jail shall be developed in the initial stages of planning the physical plant so that the jail can be designed around the operating plan, rather than the reverse. This approach will contribute to simplicity of design and effective use of operating controls.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.05, Administration/Management, Section 5, is amended by adding “upon admission.” so that as amended the rule shall read:

- (5) The facility administrator shall develop a list of articles and materials that shall be allowed in the cell area. Inmates shall be informed of this list upon admission.

Applies to Types I,II,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.05 Administration/Management, Section 8, is amended by deleting Section 8 in its entirety.

Authority: T.C.A. §41-4-140.

1400-1-.05, Administration/Management, Section 9, is amended by renumbering Section 9 to Section 8 and by adding “and/or” so that as amended the rule shall read:

- (8) The use of padlocks and/or chains to secure inmate housing areas is prohibited.

Applies to Types, I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.05, Administration/Management, Section 10, is amended by deleting Section 10 in its entirety.

Authority: T.C.A. §41-4-140.

1400-1-.08, Discipline, Section 1, is amended by deleting the Section in its entirety and substituting the following so that as amended the rule shall read:

- (1) Written facility rules along with the corresponding range of sanctions for rule violations and disciplinary procedures to be followed shall be given to each inmate during the booking process. A record shall be maintained of this transaction. Socially, mentally, or physically impaired inmates shall be assisted by staff members in understanding the rules.

Applies to Type I and IV.

Authority: T.C.A. §41-4-140.

1400-1-.09, Sanitation/Maintenance, Section 2, is amended by deleting the Section in its entirety and substituting the following so that as amended the rule shall read:

- (2) A member of the staff shall make daily sanitation and safety inspections. Dates of inspections shall be recorded and conditions noted. Any maintenance problems shall be recorded on a regular maintenance report.

Applies to Type 1 and IV.

Authority: T.C.A. §41-4-140.

1400-1-.09, Sanitation/Maintenance, Section 3, is amended by deleting “in accordance with local and state health regulations.” so that as amended the rule shall read:

- (3) The facility shall provide for regularly scheduled disposal of waste and trash.

Applies to Types I and IV.

Authority: T.C.A. §41-4-140.

1400-1-.09, Sanitation/Maintenance, Section 5, is amended by adding “Inmate housing area walls” so that as amended the rule shall read:

- (5) Inmate housing area walls shall be kept clean and free of pictures or other objects which provide hiding places for vermin or create a fire hazard.

Applies to Types I and IV.

Authority: T.C.A. §41-4-140.

1400-1-.10, Food Services, Section 7, is amended by deleting the Section in its entirety and substituting the following instead:

- (7) Shelf goods are maintained at 45 degrees to 80 degrees Fahrenheit; refrigerated foods at 35 degrees to 40 degrees Fahrenheit; and frozen foods at 0 degrees Fahrenheit or below.

Applies to Types I and IV.

Authority: T.C.A. §41-4-140.

1400-1-.14, Admissions, Records and Release Section 1(a), is amended by deleting “(felonies only)” so that as amended the rule shall read:

- (a) Picture

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.14, Admissions, Records and Release Section 1, is amended by adding “(cc) Fingerprints” so that as amended the rule shall read:

- (cc) Fingerprints

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.15, Hygiene Section 2(g), is amended by changing (g) to “Shaving equipment” and adding (h) so that as amended the rule shall read:

- (g) Shaving equipment
- (h) These items or services shall be made available at the inmate’s expense unless he cannot afford to pay, in which case they shall be provided free of charge.

Applies to Types I,II,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.15, Hygiene, Section 6(b), is amended by adding “All” so that as amended the rule shall read:

- (b) All mattresses shall be disinfected quarterly

Applies to Types I and IV.

Authority: T.C.A. 41-4-140.

1400-1-.16, Supervision of Inmates, Section 4, is amended by deleting “matron” and by adding “trained female corrections officer” so that as amended the rule shall read:

- (4) Facilities that are utilized for the confinement of females shall have a trained female correctional officer on duty or on call when a female is confined in the facility, to perform the following functions:
 - (a) Searches
 - (b) Health and welfare checks

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

1400-1-.17, Classification, Section 2, is amended by deleting the Section in its entirety and substituting the following instead:

- (2) This plan ensures total sight, sound or physical contact separation between male and female inmates and between adults and juveniles being tried as adults.

Applies to Types I,II,III,IV, and V.

Authority: T.C.A. §41-4-140.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2000, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-32)

STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-1-2 LICENSURE

Presented herein is the proposed amendment of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate this amendment without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, James K. Polk State Office Building, Fifth Floor, Sixth and Deaderick Street, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Karen Weeks, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 532-3528.

The text of the proposed rule is as follows:

AMENDMENTS

Paragraph (8) of Rule 0520-1-2-.03 Employment Standards is amended by deleting the paragraph in its entirety and substituting the following language so that as amended the paragraph shall read:

- (8) Teachers of Computer Technology, Grades 9-12
 - (a) A teacher of personal computing, computer productivity applications, and interactive multimedia design shall have a valid Tennessee teacher license with an endorsement in grades 7-12 and shall have completed the equivalent of six semester hours of computer course work or have the appropriate endorsement.
 - (b) A teacher of BASIC and adventures in computing shall have a valid Tennessee teacher license with an endorsement in grades 7-12 and shall have completed the equivalent of six semester hours of computer course work including at least one programming language.

- (c) A teacher of programming languages and advanced placement computer science shall have a valid Tennessee teacher license with an endorsement in grades 7-12 and shall have completed the equivalent of 12 semester hours of computer course work including six semester hours of programming.

Authority: *T.C.A. §49-1-302.*

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2000, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-28)

AMENDMENT

Paragraph (11) of Rule 0520-1-2-.03 Employment Standards is amended by deleting the paragraph in its entirety and substitute the following language so that as amended the paragraph shall read:

(11) Speech-Language Teacher.

- (a) A speech-language teacher employed after June 30, 2000, shall hold a valid Tennessee teacher's license with the appropriate endorsement and shall have a master's degree in speech-language pathology. Teachers with a bachelor's degree may be hired only in those school systems which have made a good faith effort to hire the most qualified teachers and have determined that there are an insufficient number of teachers with a master's degree in speech-language pathology. Teachers hired under this provision must make satisfactory progress toward achieving a master's degree within three years.
- (b) A bachelor's level teacher of speech-language with a valid Tennessee teacher license with the appropriate endorsement employed prior to June 30, 2000 must make satisfactory progress toward achieving a master's degree or the equivalent to the master's degree in speech-language pathology by July 1, 2010.
- (c) The equivalent to the master's requirements shall include the following:
 1. Successful completion of fifteen semester hours of graduate credit in the areas of speech-language pathology, audiology, speech, language, and hearing sciences. None of these semester hours may be credits earned for clinical practicum;
 2. Fifteen continuing education units in speech-language pathology earned from sources approved by the Department of Education. None of these units shall have been earned prior to January 1990. Additional graduate semester hours, up to fifteen, in speech-language pathology may be used to fulfill this requirement; and
 3. One hundred hours of practicum experience under the supervision of a teacher with a master's degree in speech-language pathology or who holds a Certificate of Clinical Competence.

Authority: *T.C.A. §§49-1-302, 49-2-301, and 49-5-108; Section 86 of Chapter 535 of the Public Acts of 1992.*

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2000, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-29)

CHAPTER 0520-1-3
MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS
AMENDMENTS

Part 1 of subparagraph (f) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the part in its entirety and substituting the following language so that as amended the part shall read:

1. Agricultural Education*
 - (i) Agriscience**
 - (ii) Fundamentals of Agriculture
 - (iii) Advanced Principles of Agriculture
 - (iv) Greenhouse Management
 - (v) Turfgrass Management
 - (vi) Nursery Production
 - (vii) Floral Design
 - (viii) Exterior/Interior Landscaping
 - (ix) Hydroponics
 - (x) Aquaculture
 - (xi) Horticulture Technology
 - (xii) Horse Science
 - (xiii) Small Animal Care
 - (xiv) Livestock Management
 - (xv) Principles of Veterinary Science
 - (xvi) Forestry
 - (xvii) Wildlife Management
 - (xviii) Soil and Land Management
 - (xix) Crop Science
 - (xx) Agricultural Power and Equipment

(xxi) Agricultural Mechanics and Maintenance

(xxii) Principles of Agricultural Engineering

(xxiii) Leadership

(xxiv) Agricultural Sales and Service

(xxv) Agricultural Business/Economics

- * A student who completes an approved supervised occupational education program consisting of at least 180 hours will be given one-half credit as an out-of-school experience.
- ** Agriscience satisfies one credit of life science laboratory credit required for graduation or it may be awarded for one vocational credit.

Authority: T.C.A. §49-1-302.

AMENDMENTS

Part 4 of subparagraph (f) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the part in its entirety and substituting the following language so that as amended the part shall read:

4. Marketing Education*
 - (i) Marketing & Management I – Principles
 - (ii) Marketing & Management II – Advanced Strategies
 - (iii) Financial Services Marketing
 - (iv) Entrepreneurship
 - (v) Services Marketing
 - (vi) Marketing Information Management
 - (vii) Retail Operations
 - (viii) Technology in Marketing
 - (ix) Advertising & Public Relations
 - (x) Organizational Leadership
 - (xi) Sales Management
 - (xii) Sports and Entertainment Marketing

- (xiii) Wholesale Operations
- (xiv) International Business & Marketing
- (xv) Exploration of Marketing & Management
- (xvi) Foundations of the Hospitality Industry
- (xvii) Travel & Tourism Operations
- (xviii) Lodging Operations

- * Completion of one-half credit in marketing education satisfies the economics requirement for graduation.

Authority: T.C.A. §49-1-302.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2000, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-37)

CHAPTER 0520-2-3 TEACHER EDUCATION AND LICENSURE

AMENDMENTS

Rule 0520-2-3-.21 Effective Dates is amended by adding the following language as paragraph (14) so that as amended the rule shall read:

- (14) Teacher candidates seeking licensure and endorsement in the following areas shall meet the requirements of Rules 0520-2-3-.01(1) through (9) and 0520-2-3-.11 no later than September 1, 2004. This rule will supersede Rule 0520-2-3-.21(3) insofar as it applies to the areas of endorsement listed below:

Business 7-12
Business Technology 7-12

Paragraph (3) of Rule 0520-2-3-.21 Effective Dates is amended by deleting the paragraph in its entirety and substituting the following language so that as amended the paragraph shall read:

- (3) Teacher candidates seeking licensure and endorsement in the following areas shall meet the requirements of Rules 0520-2-3-.01(1) through (9) and 0520-2-3.11 no later than September 1, 1994. This rule is superseded by Rules 0520-2-3-.21(11) and (14) insofar as they apply to the areas of endorsement marked by an asterisk.

*Elementary K-8 and 1-8
*English 7-12
*French 7-12

- *German 7-12
- *Latin 7-12
- *Russian 7-12
- *Spanish 7-12
- *Other Foreign Language 7-12
- *Mathematics 7-12
- *Biology 7-12
- *Chemistry 7-12
- *Physics 7-12
- *Physics 9-12
- *Earth Science 7-12
- *History 7-12
- *Government 7-12
- *Geography 7-12
- *Economics 7-12
- *Psychology 9-12
- *Sociology 9-12
- Vocational Agriculture 7-12
- Agriscience 7-12
- *Basic Business 7-12
- *Keyboarding 1-6 and 7-12
- *Shorthand 7-12
- *Data Processing 7-12
- *Office Technology 7-12
- Consumer & Homemaking 5-12
- Care/Guidance of Children 9-12
- Clothing Management, Production & Services 9-12
- Food Management, Production & Services 9-12
- Technology Education (Industrial Technology) 5-12
- Marketing 7-12
- Visual Arts K-12
- Vocal/General Music K-12
- Instrumental Music K-12

Authority: T.C.A. §49-1-302.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2000, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-35)

**CHAPTER 0520-2-4
LICENSURE****AMENDMENT**

Paragraph (1) of Rule 0520-2-4-.03 Interim License and Permit is amended by adding the following language as subparagraph (e) so that as amended the subparagraph shall read:

- (e) Interim E License. Alternative licensure for individuals who do not complete programs.
 - 1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education. The candidate must meet the content requirements for the desired area of endorsement by one of the following: (a) completion of an academic major in the desired area of endorsement, (b) determination by an institution of higher education that the person has met the knowledge and skills required for the desired area of endorsement, or (c) successful completion of the required specialty examination.
 - 2. A Tennessee superintendent/director of schools must state intent to employ the applicant and must provide a mentor teacher for the applicant during the first two years of teaching.
 - 3. The applicant who has not completed professional education, must complete the professional education component of an approved teacher education institution, not to exceed 24 semester hours. The institution will verify completion of the required knowledge and skills through a combination of course work and field experiences and will verify that the applicant has completed the testing requirements in basic skills established by the State Board of Education.
 - 4. An individual may be reissued an Interim E License not more than two times provided that a superintendent/director of schools states intent to employ. Before the first renewal, the individual must be enrolled in an institution with an approved program of studies. For each renewal, the individual must complete at least 6 semester hours of credit, unless all course work requirements have been met.
 - 5. Applicants are eligible for an Interim E License in all areas except early childhood education, middle grades education, and elementary education.
 - 6. In lieu of student teaching, an individual may present a positive recommendation from the employing school system verifying two years of successful teaching.

Authority: T.C.A. §49-1-302, 49-5-108.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of July, 2000, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-38)

**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800
DIVISION OF BOILER AND ELEVATOR INSPECTION
ELEVATOR SAFETY BOARD**

Presented herein are proposed rules, amendments and repeals of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, Elevator Safety Board, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these rules and amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules and amendments are published. Such petition to be effective must be filed in the Legal Section office of the Department of Labor and Workforce Development, Tennessee Tower - 26th Floor, 312 Eighth Avenue North, Nashville, Tennessee 37243-0293, and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Mr. Noel Chivers, Director, Boiler and Elevator Division, Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower - 3rd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0663, telephone: (615) 741-2123.

The text of the proposed rules, amendments and repeals is as follows:

CHAPTER 0800-3-4

NEW ELEVATORS, DUMBWAITERS, AND ESCALATORS

NEW RULES

TABLE OF CONTENTS

0800 3-4-.10 ADOPTION OF ELEVATOR SAFETY CODE AMENDMENTS AND INTERPRETATIONS

0800 3-4-.10 ADOPTION OF ELEVATOR SAFETY CODE AMENDMENTS AND INTERPRETATIONS. The Board shall annually review and may adopt by rule the existing published codification of the Safety Code for Elevators and Escalators, ASME A17.1, with the amendments and interpretations thereto made and approved by the American Society of Mechanical Engineers. The Board shall likewise annually review and may adopt by rule the amendments and interpretations subsequently made and published by the same authority pursuant to such annual review. When so adopted, said existing published codification and the amendments and interpretations thereto shall be deemed incorporated into, and to constitute a part of the whole of the definitions, rules and regulations of the Board.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-103(a)(4).

AMENDMENTS

Chapter 0800-3-4 New Elevators, Dumbwaiters, and Escalators is amended by deleting the chapter title in its entirety and substituting the following language, so that as amended the title shall read:

**CHAPTER 0800-3-4
ELEVATORS, DUMBWAITERS, ESCALATORS AND OTHER LIFTS**

Authority: T.C.A. §§4-5-202(a)(3), 68-121-103(a)(4).

Rule 0800-3-4-.01 Definitions is amended by deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

RULE 0800-3-4-.01 DEFINITIONS

- (1) Board. The Tennessee Elevator Safety Board described in T.C.A. Section 68-121-102 of the Elevator Safety Act.
- (2) Commissioner. The Commissioner of Labor and Workforce Development.
- (3) Department. The Tennessee Department of Labor and Workforce Development.
- (4) Elevator, dumbwaiter, escalator, and other lift. Hoisting and lowering mechanisms as defined in Section 3 of the Elevator Safety Code.
- (5) New Installation. Any new installation of elevators, dumbwaiters, escalators, or other lifts as defined in the Introduction, Section 3 Definitions of the Elevator Safety Code, for which the plans and specifications and the application for the construction permit are filed as required by T.C.A. Section 68-121-108. All other installations shall be deemed to be existing installations or installations placed out of service as defined in the Introduction, Section 3 Definitions of the Elevator Safety Code.
- (6) Other Terms. All other terms used in this Chapter shall have the meaning as defined in the Introduction, Section 3 Definitions of the Elevator Safety Code.
- (7) The Elevator Safety Code. The Safety Code for Elevators and Escalators, ASME A17.1 - 1996, Fifteenth Edition, 1996, as amended, approved by the American Society of Mechanical Engineers on October 3, 1996, effective July 1, 1997, with 1997 Supplements ASME A17.1a - 1997, approved by the American Society of Mechanical Engineers on January 8, 1998, effective August 28, 1998, ASME A17.1b - 1998, approved November 13, 1998, effective August 20, 1999, and ASME A17.1c - 1998, approved May 13, 1999, effective December 31, 1999, and it shall be considered a portion of this Chapter where rule numbers are used in this Chapter, they refer to the rules of the Safety Code for Elevators and Escalators.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-103(a)(4).

Rule 0800-3-4-.02 General Requirements is amended by deleting the current language in its entirety and submitting the following language so that as amended the rule shall read:

0800-3-4-.02 GENERAL REQUIREMENTS.

- (1) **Application.** The requirements of this Chapter shall apply to all installations of elevators, dumbwaiters, escalators, and other lifts as hereinafter specified.
- (2) **Responsibility.** Responsibility for the care, operation and maintenance of elevators, dumbwaiters, escalators, and other lifts shall be as follows:
 - (a) The person or firm installing, relocating or altering an elevator, dumbwaiter, escalator, or other lift shall be responsible for its operation and maintenance until the operating permit therefor has been issued by the Commissioner, except during the period when any limited operating permit, as defined in Rule 0800-3-4-.05(5) hereof, shall be in effect, and shall also be responsible for all tests of new, relocated and altered equipment until the operating permit therefor has been issued by the Commissioner.
 - (b) The owner or his duly appointed agent shall be responsible for the safe operation and proper maintenance of the elevator, dumbwaiter, escalator, or other lift, after the operating permit has been issued by the Commissioner and also during the period of effectiveness of any limited operating permit as defined in Rule 0800-3-4-.05(5) hereof. The Owner shall also be responsible for making all initial and periodic tests required by this Chapter.
- (3) **Exceptions and Use of Other Devices and Methods.** The Board only shall have power to grant exceptions from the requirements of this Chapter and to permit the use of other devices and methods at its discretion, within the limitations stated in the Elevator Safety Code.
- (4) **Numbering of Elevators, Dumbwaiters, Escalators and Other Lifts.** All new and existing elevators, dumbwaiters, escalators, and other lifts shall have a serial number assigned by the Department stamped on or attached to the crosshead of the elevator car and/or to the escalator ballaster in plain view. This serial number shall be shown on all required permits.
- (5) **Construction Permits.**
 - (a) A construction permit shall be obtained from the Department before erecting or constructing new elevators, dumbwaiters, escalators, and other lifts, moving such apparatus from one hoistway to another, or before making alterations to existing equipment. The owner, or his authorized agent, shall submit an application for such permit accompanied by plans and specifications in duplicate, in such form as the Department may prescribe. Where such plans and specifications indicate compliance with this Chapter the Commissioner shall issue a construction permit.
 - (b) The acceptance fees are to be the same as the permit fees. No permit shall be required for repairs and replacements normally necessary for maintenance with parts of equivalent materials, strength and design.
- (6) **Registration of Elevators, Dumbwaiters, Escalators and Other Lifts**
 - (a) Within sixty days after the date of adoption of this Chapter, the owner or lessee of every existing elevator, dumbwaiter, escalator, and other lift shall register with the Department of Labor and Workforce Development each such elevator, dumbwaiter, escalator, or other lift owned and operated by such owner,

giving type, contract load, and speed, name of manufacturer, its location and the purpose for which it is used and such other information as the Department may require. Such registration shall be made on a form to be furnished by the Department of Labor and Workforce Development on request.

- (b) Elevators, dumbwaiters, escalators, and other lifts whose erection is begun subsequent to the date of adoption, but prior to the effective date of this Chapter, shall be registered with the Department within not more than seven (7) days after they are completed and placed in service.
- (7) Maintenance of Elevators, Dumbwaiters, Escalators and Other Lifts. Every elevator, dumbwaiter, escalator, and other lift shall be maintained by the owner or lessee in a safe operating condition and in conformity with the rules of this Chapter.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-101, 68-121-103, 68-121-104, 68-121-105, 68-121-107, 68-121-108, 68-121-109, 68-121-111, and 68-121-115.

Rule 0800-3-4-.03 Design, Installation and Alterations is amended by deleting the current language in its entirety and submitting the following language so that as amended the rule shall read:

- (1) New Installations and Relocations.
 - (a) All new installations and relocations of elevators, dumbwaiters, escalators and other lifts shall be designed and installed in accordance with the requirements of The Elevator Safety Code. The design of each new installation or relocation shall be in accordance with the edition of The Elevator Safety Code adopted by the Board and effective as of the date that such design plan is approved by the Board.
 - (b) New installations and relocations failing to meet the requirements, as set out in the Elevator Safety Code, shall only be altered pursuant to exceptions granted by the Board. All requests for exceptions shall be submitted to the Board in writing no later than 30 days prior to the next regularly scheduled or called meeting of the Board. All duly filed requests for exceptions shall be considered by the Board at the next regularly scheduled or called meeting of the Board.
- (2) Existing Installations. Existing elevators, dumbwaiters, escalators, and other lifts installed before the adoption of this Chapter may be used without being altered to comply with the requirements of the Elevator Safety Code, provided, however, that such existing elevators, dumbwaiters, escalators, and other lifts that are altered shall meet the requirements as set out by paragraph (3) of this rule. Every installation shall be maintained in a safe operating condition and shall be subject to inspections and tests hereafter specified.
- (3) Alteration of Existing Installations.
 - (a) Any alteration made to existing installations must meet the requirements as set out in Part XII of the Elevator Safety Code, or must be made in accordance with exceptions granted by the Board. All requests for exceptions shall be submitted to the Board in writing no later than 30 days prior to the next regularly scheduled or called meeting of the Board. All duly filed requests for exceptions shall be considered by the Board at the next regularly scheduled or called meeting of the Board.
 - (b) Any combination of alterations or changes made to an existing installation constituting more than 50% of the elevator installation or hoistway construction, shall be considered a major combination of alterations, and the entire installation shall conform to the requirements of Part XII, Section 1200 of the Elevator Safety Code.

- (c) Replacement of a traction or hydraulic controller and machine at the same time or at separate times within a 12 month period shall be considered a major combination of alterations, and subparagraph (b) of this paragraph (3) of this rule shall apply to such replacement.
 - (d) Other combinations of elevator replacement and repair of existing installations shall be considered a minor alteration, and shall at all times comply with Part XII, Section 1200 of the Elevator Safety Code. If the contractor or owner determines that an inspection of a minor alteration pursuant to Rule 0800-3-4-.04 of this Chapter is appropriate, the contractor or owner shall direct such request for inspection to the local state elevator inspector, and pay the applicable fee provided in Rule 0800-3-10-.01.
- (4) Repairs and Replacements. Repairs and replacements of damaged, broken, or worn parts shall conform to the requirements of Part XII, Section 1200 of the Elevator Safety Code.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-103(a)(4).

Rule 0800-3-4-.04 Inspection and Tests is amended by deleting the current language in its entirety and submitting the following language so that as amended the rule shall read:

0800-3-4-.04 INSPECTION AND TESTS

- (1) New, Relocated or Altered Elevators, Dumbwaiters, Escalators, and Other Lifts.
 - (a) Acceptance Tests. The person or firm installing, relocating or altering elevators, dumbwaiters, escalators or other lifts shall notify the Department in writing at least seven (7) days before completion of the work and shall subject the new, moved, or altered portions of the equipment to the tests specified in Part X, Section 1000 of the Elevator Safety Code as amended, insofar as the equipment mentioned therein is required or provided, to show that such equipment conforms to the requirements specified.
 - (b) Acceptance Inspection. All new, altered and relocated elevators, dumbwaiters, escalators and other lifts shall be inspected for compliance with the requirements of this Chapter. Such inspections shall conform to the requirements of Part X, Section 1000.1c of the Elevator Safety Code, as amended, and determine whether such equipment conforms to the requirements specified.
 - (c) The inspections required by this Rule shall be made by an inspector licensed and employed by the State of Tennessee who shall also witness the tests specified in this Rule.
 - (d) The person or firm installing such elevator, dumbwaiter, escalator, or other lift shall pay to the Department an acceptance inspection fee, as provided for in Rule 0800-3-10-.01 Fees.
- (2) Periodic Inspections and Tests of all Elevators, Dumbwaiters, Escalators, and Other Lifts.
 - (a) The owner or lessee of every elevator, dumbwaiter, escalator, and other lift shall cause it to be inspected and tested every sixth calendar month following the month in which the inspection and test required by Rules 0800-3-4-.04(1) has been made.
 - (b) Periodic inspections and tests shall conform to the requirements of the Elevator Safety Code.
- (3) Required Inspections. The inspections required by paragraphs (1) and (2) of this Rule shall be “required inspections.”

(4) Report of Inspections.

- (a) A report of every required inspection shall be filed with the Department by the inspector making such inspection on a form approved by the Department, within twenty (20) days after the inspection or test has been completed. The report of the inspections required by subdivisions (1) and (2) of this Rule shall include all information required by the Department to determine whether the owner or lessee of the elevator or escalator has complied with the applicable requirements of this Chapter.
- (b) For the inspection required by subdivision (1) of this Rule the report shall in addition indicate whether the elevator, dumbwaiter, escalator, or other lift has been installed in accordance with the construction permit issued by the Department under Rule 0800-3-4-.02(5) of this Chapter and meets the requirements of the applicable rules of the Elevator Safety Code.

- (5) Additional Inspections. In addition to such “required inspections” the Commissioner may designate a licensed inspector in the employ of the State to make such additional inspections as may be required to enforce the provisions of this Chapter.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-101, 68-121-103, 68-121-104, 68-121-105, 68-121-106, 68-121-107, 68-121-108, 68-121-109, 68-121-111, and 68-121-115.

Rule 0800-3-4-.05 Operating Permits is amended by deleting the current language in its entirety and submitting the following language so that as amended the rule shall read:

0800-3-4-.05 OPERATING PERMITS

(1) Issuing of Permits

- (a) Operating permits shall be issued by the Commissioner, within the time limits hereafter specified, to the owner or lessee of every new and existing elevator, dumbwaiter, escalator, and other lift, where the inspection report indicates compliance with this Chapter, provided that no permit shall be issued if the fees required by this Chapter have not been paid. Said time limits shall be thirty (30) days for existing elevators, dumbwaiters, escalators, and other lifts, and seven (7) days for new elevators, dumbwaiters, escalators, and other lifts, after the required date for filing the inspection report required by Rule 0800-3-4.04(4), unless such time is extended by the Commissioner. No elevator, dumbwaiter, escalator, or other lift, for which such permit is required, shall be operated by the owner or lessee thereof after the dates specified in this section, unless such operating permit has been issued.
- (b) The operating permit shall be issued for the period covered by the inspection required by Rules 0800-3-4.04(1) and 0800-3-4-.04(2) shall state the contract load and speed for such elevator, dumbwaiter, escalator, and other lift. It shall be extended by endorsement of the Commissioner or his duly appointed agent after each periodic inspection required by Rule 0800-3-4-.04(2).
- (c) If the inspection report, required by Rule 0800-3-4.04(4) indicates failure of compliance with the applicable requirements of this Chapter or with the detailed plans and specifications approved by the Department under Rule 0800-3-4-.02(5), the Commissioner shall give notice to the owner or lessee or the person or persons filing such plans and specifications of changes necessary for compliance therewith. After such changes have been made, the Commissioner shall issue an operating permit.
- (d) If the inspection report, required by Rule 0800-3-4-.04(4) indicates that an elevator, dumbwaiter, escalator, or other lift is in an unsafe condition, so that its continued operation may be dangerous to the public safety, then the Commissioner may, at his discretion, require the owner or lessee to discontinue

the use of such elevator, dumbwaiter, escalator, or other lift until it has been made safe and in conformity with the requirements of this Chapter.

- (e) If the Commissioner has reason to believe that any owner or lessee to whom an operating permit has been issued is not complying with the applicable rules of this Chapter he shall so notify such owner or lessee, and shall give notice of a date for a hearing hereon to such owner or lessee. If, after such hearing, he shall find that such owner or lessee is not complying with such rules and regulations, he shall revoke such permit.
- (2) **Serial Number Shown on Permits.** Permits shall show the serial number of the elevator, dumbwaiter, escalator, or other lift for which it is issued, as required in Rule 0800-3-5-.02(4), "Numbering of Elevators and Escalators."
- (3) **Posting of Permits.** The required permit, or a sign designating where such permit is located, shall be posted in a conspicuous location in the elevator car, or on or near the escalator, dumbwaiter, or other lift.
- (4) **Limited Operating Permit.** The Commissioner may permit the temporary use of any elevator, dumbwaiter, escalator, or other lift for passenger or freight service during its installation or alteration, under the authority of a limited permit, issued by him for each class of service. In the case of elevators, such limited permit shall not be issued until the elevator shall have been tested under the contract load, and the car safety and terminal stopping equipment have been tested to determine the safety of the equipment for construction purposes, and until permanent or temporary guards or enclosures are placed on the car and around the hoistway at the landing entrances on each floor. Landing entrance guards shall be provided with locks that can be released from the hoistway side only. Automatic and continuous pressure elevators shall not be placed in temporary operation from the landing push buttons unless door locking devices and/or interlocks required by The Elevator Safety Code are installed and operative.
- (5) **Life of Limited Permits.** Limited permits shall be issued for a period not to exceed thirty (30) days and may be renewed at the discretion of the Commissioner.
- (6) **Posting of Limited Permits.** Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted on, near, or visible from each entrance to such elevator, dumbwaiter, escalator, or other lift.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-101, 68-121-103, 68-121-104, 68-121-105, 68-121-107, 68-121-108, 68-121-109, 68-121-111, and 68-121-115.

Rule 0800-3-4-.06 Qualifications and Licensing of Inspectors is amended by deleting the rule in its entirety and substituting the following language so that as amended such paragraph shall read as follows:

0800-3-4-.06 QUALIFICATIONS AND LICENSING OF INSPECTORS. All required inspections made under the requirements of this Chapter shall be made by, or in the presence of inspectors qualified and licensed as prescribed in T.C.A. Section 68-121-110 and Rule 1000.1 of the Elevator Safety Code.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-110

Rule 0800-3-4-.07 Elevator, Dumbwaiter and Escalator Accidents is amended by deleting the rule title and paragraph (1) in their entirety and substituting the following language, so that as amended such paragraph shall read as follows:

0800-3-4-.07 ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER LIFTS ACCIDENTS.

- (1) The owner or his duly authorized agent shall immediately notify the Commissioner of each and every elevator, dumbwaiter, escalator or other lift accident involving a person requiring the service of a physician, or damage to the elevator, dumbwaiter, escalator or other lift equipment that impairs the safe operation of such equipment, as required by the Elevator Safety Code, and shall afford the Commissioner every facility for investigating and inspecting such accident or damage. The Commissioner shall, without delay, after being notified, make an investigation and shall have placed on file a full and complete report of such accident.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-103(a)(4).

Rule 0800-3-4-.08 Appeals and Amendments is amended by deleting the rule in its entirety and substituting the following language so that as amended such paragraph shall read as follows:

0800-3-4-.08 APPEALS. Appeals from Orders or Acts of the Commissioner in the enforcement of the rules of this Chapter shall be made as required by T.C.A. Section 68-121-112 of the Elevator Safety Law.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-101, 68-121-103, 68-121-104, 68-121-105, 68-121-106, 68-121-107, 68-121-108, 68-121-109, 68-121-110, 68-121-111, 68-121-112, and 69-121-115.

Rule 0800-3-4-.09 Specifications for Tests and Inspections is amended by deleting the rule in its entirety and substituting the following language so that as amended such paragraph shall read as follows:

0800-3-4-.09 SPECIFICATIONS FOR TESTS AND INSPECTIONS. Part X, Sections 1000 and 1001 of the 1996 revision of the ASME A17.1 Code as amended, which recommends the American National Standard Practice for the inspection of Elevators, Inspectors Manual, A17.2 1996 edition as amended, with addenda, is a guide for making the inspections and tests.

Authority: T.C.A. §§68-121-101, 68-121-103 through 68—121—111, 68—121—115 and 4—5—202.

**CHAPTER 0800-3-6
SPECIAL PURPOSE PERSONNEL ELEVATORS
AMENDMENTS**

Rule 0800-3-6-.01 Safety Standards is amended by deleting the paragraph in its entirety and substituting the following language, so that as amended such paragraph shall read as follows:

0800-3-6-.01 SAFETY STANDARDS. All new Special Purpose Personnel Elevators as defined in Tennessee Code Annotated 68-121-101 shall comply with the Safety Code for Elevators and Escalators, Fifteenth Edition, approved October 3, 1996, - ASME A17.1-1996, effective July 1, 1997, as amended, with supplements ASME A17.1a – 1997, approved January 8, 1998, prepared and published by the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-101, 68-121-103, 68-121-105, 68-121-106, 68-121-107, 68-121-108, and 69-121-109.

**CHAPTER 0800-3-7
SEWER LIFT STATION, PERSONNEL ELEVATORS**

AMENDMENTS

Rule 0800-3-7-.22 Wiring Methods is amended by deleting paragraph (2) in its entirety and substituting the following language, so that as amended such paragraph shall read as follows:

- (2) Traveling cables, where used between the car and hoistway wiring, shall be type S.O. See National Electrical Code (ASME-CI-1999).

Authority: T.C.A. Title 68, Chapter 121

Rule 0800-3-7-.22 Wiring Methods is amended by deleting paragraph (2) in its entirety and substituting the following language, so that as amended such paragraph shall read as follows:

**CHAPTER 0800-3-8
AERIAL PASSENGER TRAMWAYS, LIFTS, SURFACE LIFTS AND TOWS**

AMENDMENTS

0800-3-8-.01 SAFETY STANDARDS. All new and existing aerial passenger tramways, lifts, surface lifts and tows as defined in Tennessee Code Annotated, Section 68-121-101 shall comply with The American National Standard Safety Requirements for Aerial Passenger Tramways, Lifts, Surface Lifts and Tows, edition dated March 26, 1990, — B77.1, as amended, prepared and published by The American National Standards Institute, 1430 Broadway, New York, New York.

Authority: T.C.A. §§68-121-101, 68-121-103, 68-121-105, 68-121-106, 68-121-107, 68-121-108, 68-121-109 and 4-5-202.

**CHAPTER 0800-3-9
OPERATION UNDER EMERGENCY CONDITIONS**

AMENDMENTS

Rule 0800-3-9-.01 Safety Standards is amended by deleting the rule in its entirety and substituting the following language, so that as amended such paragraph shall read as follows:

0800-3-9-.01 SAFETY STANDARDS. All elevators installed after the effective date of this regulation shall comply with the safety standards for the operation of elevators under fire or other emergency conditions prescribed in Part II, Section 211 of the Safety Code for Elevators and Escalators, ASME A17.1 - 1996, Fifteenth Edition, 1996, as amended, approved by the American Society of Mechanical Engineers on October 3, 1996, effective July 1, 1997, with 1997 Supplements ASME A17.1a - 1997, approved on January 8, 1998, effective August 28, 1998.

Authority: T.C.A. §§4-5-202(a)(3), 68-121-101, 68-121-103, 68-121-104, 68-121-109, 68-121-111, and 69-121-115.

**CHAPTER 0800-3-10
STAIRWAY INCLINED AND VERTICAL WHEELCHAIR LIFTS
FOR DISABLED PERSONS**

AMENDMENTS

Rule 0800-3-10-.01 Fees is amended by deleting the statute title and chapter number 68-19 wherever such number appears in the rule and substituting the following language, so that as amended the rule shall read as follows:

0800-3-10-.01 FEES

The following are the required fees for construction permits, acceptance inspections, operating permits, initial inspection, periodic inspections, and requested inspections for new and existing elevators, escalators, chair lifts, aerial passenger tramways, lifts, surface lifts, tows and dumbwaiters.

- (1) For construction permits for new or altered elevators, escalators, aerial passenger tramways, lifts, surface lifts, tows and dumbwaiters required by T.C.A. Section 68-121-108(c).....\$100.00
- (2) For acceptance inspections for new or altered elevators, escalators, aerial passenger tramways, lifts, surface lifts, tows and dumbwaiters required by T.C.A. Section 68-121-108(c).....\$100.00
- (3) For operating permits for new or existing elevators, escalators, aerial passenger tramways, lifts, surface lifts, tows and dumbwaiters required by T.C.A. Section 68-121-107(6).....\$25.00
- (4) For periodic inspections of passenger elevators, freight elevators, escalators, chair lifts, aerial passenger tramways, lifts, surface lifts, tows and dumbwaiters required by T.C.A. §68-121-106, as follows:
 - (a) All passenger and freight elevators with three (3) or more landings.....\$30.00
Plus five dollars (\$5.00) for any additional landings above the third landing up to a maximum of fifty dollars (\$50.00) per elevator.
 - (b) Escalators.....\$30.00
 - (c) All inclined and vertical chair lifts.....\$25.00
 - (d) Aerial passenger tramways, lifts, surface lifts, and tows \$100.00
 - (e) All dumbwaiters \$25.00

The fees prescribed by these regulations supersede all fees prescribed by previous regulations for construction permits, acceptance inspection, operating permits, initial inspections, periodic inspection, and requested inspection for elevators, escalators, aerial passenger tramways, lifts, surface lifts, tows, and dumbwaiters.

Authority: T.C.A. §§68-121-101, 68-121-103, 68-121-105, 68-121-106, 68-121-107, 68-121-108, 68-121-109, 68-121-111, 68-121-115 and 4-5-202.

CHAPTER 0880-3-12**STAIRWAY INCLINED AND VERTICAL WHEELCHAIR LIFTS
FOR DISABLED PERSONS****AMENDMENTS**

Rule 0800-3-12-.01 Safety Standards is amended by deleting the paragraph in its entirety and substituting the following language so that as amended the paragraph shall read:

0800-3-12-.01 SAFETY STANDARDS. All new stairway inclined and vertical wheelchair lifts for disabled persons as defined in Tennessee Code Annotated 68-121-101 shall comply with the Safety Code for Elevators and Escalators, Fifteenth Edition, approved October 3, 1996, - ASME A17.1-1996, effective July 1, 1997, as amended, with supplements ASME A17.1a - 1997, approved January 8, 1998, prepared and published by the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.

Authority: T.C.A. §§68-121-101, 68-121-103, 68-121-105, 68-121-106, 68-121-107, 68-121-108, 69-121-109 and 4-5-202(a)(3).

REPEALS

Chapter 0800-3-5 Existing Elevators, Dumbwaiters, and Escalators is repealed.

Authority: T.C.A. §§ 4-5-202(a)(3), 68-121-103(a)(4).

The proposed rules set out herein were properly filed in the Department of State on the 24th day of July, 2000, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-01)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640**CHAPTER 1640-1-13
MINORITY TEACHING FELLOWS PROGRAM**

Presented herein are proposed amendments of the Tennessee Student Assistance Corporation submitted pursuant to Tennessee Code Annotated Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0820 and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendment contact: Ron Gambill, Executive Director, Tennessee Student Assistance Corporation, 404 James Robertson Parkway, Suite 1950, Nashville, TN 37243-0820, (615) 741-1346.

The text of the proposed amendment is as follows:

AMENDMENTS

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (a) is amended by deleting the last sentence and replacing it with two new sentences. The two new sentences are as follows:

All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

As amended, Subparagraph (a) shall read as follows:

- (a) The loan must be repaid should the recipient choose not to honor the terms and conditions of the loan agreement. Repayment will include the full amount of the loan funds received plus interest accrued from the date of award(s). The interest accrued is determined by an interest rate of 9% per annum. Repayment may be in whole or in monthly installments of at least one hundred dollars (\$100) over a period of not more than ten years from the end of the grace period. Payments of less than one hundred dollars (\$100) per month may be made only if the recipient documents to TSAC's satisfaction his or her inability to make payments of that size. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

Authority: T.C.A. §§49-4-204 and 49-4-706

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (c) is amended by deleting the next to last sentence and replacing it with two new sentences.

The two new sentences are as follows:

All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

As amended, Subparagraph (c) shall read as follows:

- (c) Repayment for recipients who fail to complete the funded plan of study shall begin on the first day of the month following such failure. Interest shall begin to accrue immediately after the termination of the award. Repayment will include the full amount of the loan funds received plus interest accrued from the date of award(s), and shall be based upon the 9% per annum interest rate from the time of the recipient's first award. Repayment may be made in whole or in monthly installments over a period of not more than ten years from the date of failure to complete the plan of study. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized. If a borrower issues a check, draft, warrant or electronic funds transfer, which is subsequently returned to the Tennessee Student Assistance Corporation for reason of insufficient funds, a stop payment order by the issuer, or any other reason, the payment to which these funds was applied shall be reversed on the borrower's account and interest shall continue to accrue from the date of the last valid payment.

Authority: T.C.A. §§49-4-204 and 49-4-706

Rule 1640-1-13-.05, Loan Amount and Terms, Paragraph (4), Subparagraph (d) is amended by deleting the next to last sentence and replacing it with two new sentences. The two new sentences are as follows:

All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

As amended, Subparagraph (d) shall read as follows:

- (d) Repayment of principal and interest will be prorated for partial service cancellation to reflect each full academic year taught. Such repayment shall begin on the first day of the month following termination of the creditable teaching service. Repayment of the non-cancelled loan may be made in whole or in monthly installments over the remaining months of the ten-year repayment period. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized. Minimum monthly payments of one hundred dollars (\$100) will be required unless an exception as described in (4)(a) is granted.

Authority: *T.C.A. §§49-4-204 and 49-4-706*

The proposed rules set out herein were properly filed in the Department of State on the 26th day of July, 2000, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2000. (07-09)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 1240 - Department of Human Services - Community and Field Services Division - Public necessity rules concerning child care standards for children being cared for in group day care homes licensed by the Department of Human Services, 7 T.A.R. (July 2000), chapter 1240-4-1, Standards for Group Day Care Homes - Filed June 30, 2000; effective through December 12, 2000. (06-38)
- 1240 - Department of Human Services - Community and Field Services Division - Public necessity rules concerning child care standards for children being cared for in child care centers caring for pre-school children licensed by the Department of Human Services, 7 T.A.R. (July 2000), chapter 1240-4-3, Licensure Rules for Child Care Centers Serving Pre-School Children - Filed June 30, 2000; effective through December 12, 2000. (06-37)
- 1240 - Department of Human Services - Community and Field Services Division - Public necessity rules concerning child care standards for children being cared for in family day care homes licensed by the Department of Human Services, 7 T.A.R. (July 2000), chapter 1240-4-4, Standards for Family Day Care Homes - Filed June 30, 2000; effective through December 12, 2000. (06-39)
- 1240 - Department of Human Services - Community and Field Services Division - Public necessity rules concerning child care standards for children being cared for in child care centers serving school-age children licensed by the Department of Human Services, 7 T.A.R. (July 2000), chapter 1240-4-6, Licensure Rules for Child Care Centers Serving School-Age Children - Filed June 30, 2000; effective through December 12, 2000. (06-41)
- 1240 - Department of Human Services - Community and Field Services Division - Public necessity rules dealing with the enforcement of licensing violations involving child care agencies which it licenses by the Department of Human Services, 7 T.A.R. (July 2000), chapter 1240-5-11, Procedures Affecting Licenses of Child Welfare Agencies - Filed June 30, 2000; effective through December 12, 2000. (06-40)

**DEPARTMENT OF HUMAN SERVICES - 1240
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the standard of need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. TCA Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the standard of need, in the annual Appropriations Act or in rule of the Department. Additionally, because the amount of funding available for grants and the new standard of need is not known until the passage of the annual Appropriations Act which did not occur until June of 2000, and because the law requires that the standard of need and grant amounts be set by rule to be effective on July 1 of the fiscal year, it is not possible to establish rules by regular rulemaking procedures.

For a complete copy of these public necessity rules, contact: Phyllis Simpson, Assistant General Counsel, Tennessee Department of Human Services, Tennessee Tower, 312 8th Avenue North, 26th Floor, Nashville, TN 37243, telephone number (615) 741-9534.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

AMENDMENTS

Rule 1240-1-50-.20 is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 STANDARD OF NEED/INCOME. The following table shows the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

- (1) Families First Standards
 - (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including

- food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
- (b) Gross Income Standard (GIS). This standard is set by federal law at 185% of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the AG is not eligible for Families First.
 - (c) Standard Payment Amount (SPA). Tennessee does not meet 100% of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on funds available, is paid, except in the instances specified in subparagraph (e) below.
 - (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.
 - (e) Family Benefit Cap
 - 1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by Public Chapter 950 (1996), unless
 - (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First;
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home; or
 - (VI) when a Families First case is closed, through a deliberate action, without good cause, and the family reapplies within ninety (90) days.
 - 2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
 - 3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt for an eighteen (18) month eligibility period during which the child

was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.

(f) An assistance payment is determined as follows:

1. If the assistance group’s net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
2. If the assistance group’s net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.

3. The minimum monthly grant which can be paid is ten dollars (\$10).

(g) Families First Need/Payment Standards

1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	910	1310	1554	1624	1944	1978	2140	2168	2383	2405
Consolidated Need Standard	492	708	840	878	1051	1069	1157	1172	1288	1300
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2488	2559	2623	2681	2731	2775	2816	2851	2882	2910
Consolidated Need Standard	1345	1383	1418	1449	1476	1500	1522	1541	1558	1573
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	910	1310	1554	1624	1944	1978	2140	2168	2383	2405
Consolidated Need Standard	492	708	840	878	1051	1069	1157	1172	1288	1300
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2488	2559	2623	2681	2731	2775	2816	2851	2882	2910
Consolidated Need Standard	1345	1383	1418	1449	1476	1500	1522	1541	1558	1573
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 22.0% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 27.6% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 1999-2000.

Authority: T.C.A. §§4-5-201 et seq.; 4-5-209; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)- (g); Senate Bill 2977/House Bill 2790 (2000); 42 USCA 601 et seq.; 45 CFR 233.20; 42 USCA § 1315 .

The public necessity rules set out herein were properly filed in the Department of State on the 3rd day of July, 2000, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 15th day of December, 2000. (07-06)

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RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE -0780

There will be a hearing before the Department of Commerce and Insurance to consider the promulgation of rules and repeals of rules pursuant to T.C.A. §§ 46-1-108 and 62-5-405. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 12:00 Noon (CDT) on the 19th day of September, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be made in person, by writing, telephoning, or by other means, and should be made no less than ten days prior to September 19, 2000 to allow time to provide such aid or service. Contact the Department of Commerce and Insurance ADA Coordinator, Ms. Verna Norris, 5th Floor Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN 37243-0567, (615) 741-0481.

For a copy of the entire text of this notice of rulemaking hearing contact: Arthur J. Giles, Executive Director, Burial Services, Department of Commerce and Insurance, 2nd Floor Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN 37243-1145, telephone (615) 741-5062.

REPEALS

Chapter 0780-1-48 Preneed Funeral Service Contracts is repealed.

Authority: T.C.A. §62-5-405.

Chapter 0780-5-6 Cemetery Advisory Board is repealed.

Authority: T.C.A. §46-1-108.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-7-1 DEFINITIONS

NEW RULES

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0780-7-1-.01 Definitions

0780-7-1-.01 DEFINITIONS.

- (1) "Cemetery" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains.
- (2) "Cemetery company" means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery.
- (3) "Cemetery purposes" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement, and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation, and embellishment of cemetery property.
- (4) "Columbarium" means a structure, room, or space in a building or structure used, or intended to be used, for the interment of cremated human remains.
- (5) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.
- (6) "Commodity" includes, but is not limited to, memorials consisting of permanent monuments or gravemarkers of marble, granite, or bronze, bronze plaques, or bronze vases; and foundations or footings of such memorials. "Commodity" does not include floral arrangements and plants.
- (7) "Consumer price index" means the consumer price index-all urban consumers (CPI-U), United States city average, all items, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.
- (8) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.
- (9) "General fund" means the sum total of specific funds placed in a single fund.
- (10) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition and cremated remains.
- (11) "Improvement care" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including the cutting of the grass upon and the raking and cleaning of cemetery plots at reasonable intervals, the pruning of shrubs and trees thereon; the memorial care of commodities; the procuring, maintaining, and keeping in workable condition the machinery, tools, and equipment needed for the shop and replacing the same when necessary; keeping in repair and preserving the drains, water lines, roads, walkways, buildings, fences, and other structures, including cemetery-owned statues and embellishments of general character applicable to the cemetery as a whole or to a particular area; administration of the cemetery, including, but not limited to, payment of insurance premiums, pensions, maintaining the necessary records of lot ownership, burials, and other necessary information and making the same available to public authorities and interested persons.
- (12) "Interment" means any lawful disposition of the remains of a deceased person as provided by law.
- (13) "Lawn crypts" means pre-placed chambers, constructed of reinforced concrete and installed in quantity, either side-by-side or multiple depth, with gravel and tile underlay and covered by earth or sod, each crypt being an integral part of a given garden area.
- (14) "Lot" or "grave space" means a space of ground in a cemetery used, or intended to be used, for interment therein, the beautification of the ground, or the memorialization of the deceased person.
- (15) "Mausoleum crypts" means chambers contained in a structure or building constructed of reinforced concrete whether assembled above or below ground.

- (16) "Memorial care" includes, but is not limited to, resetting or straightening tipped commodities, replacing damaged commodities, and providing for the general maintenance of commodities. "Memorial care" does not include the removal of the patina from copper, bronze, or other copper alloy commodities nor does "Memorial care" include the removal from any commodities of any discoloration resulting from natural or environmental causes.
- (17) "Merchandise" means personal property sold by a cemetery company, such as foundations, markers, memorials, memorial bases, monuments, urns, vases, and lawn and mausoleum crypts.
- (18) "Niche" means a space in a columbarium used, or intended to be used, for the interment of the cremated remains of one (1) or more deceased persons.
- (19) "Person" means, according to the context, any individual, association, partnership, corporation, or any other organization or entity.
- (20) "Preneed" means the time prior to death when the use of merchandise or services is not actually required.
- (21) "Services" means acts performed by a cemetery company on its premises in the final interment of human remains or the installation of merchandise used in connection therewith.
- (22) "Specific funds" means funds identified with merchandise to be delivered or services to be performed as specified in a certain contract and earmarked as having been paid by a certain purchaser.
- (23) "Undeveloped" means real property which is not presently suitable for interment, entombment, or inurnment as described in the purchase agreement.

Authority: T.C.A. §46-1-108(a) and (b).

**CHAPTER 0780-7-2
GENERAL PROVISIONS**

NEW RULES

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0780-7-2-.01	Consumer Price Index Adjustment for Installation of Commodities Fee	0780-7-2-.03	Bureau of Labor Statistics CPI-U Annual Averages
0780-7-2-.02	Consumer Price Index Adjustment for Memorial Care Fee	0780-7-2-.04	Memorial Care Required
		0780-7-2-.05	Sign Required at Cemetery

0780-7-2-.01 CONSUMER PRICE INDEX ADJUSTMENT FOR INSTALLATION OF COMMODITIES FEE.

- (1) A cemetery owner shall be permitted to prohibit the installation of a commodity by noncemetery personnel; provided, that the fee charged by the cemetery owner for installation of such commodity does not exceed ten cents (\$0.10) per square inch of the ground covered by such commodity. As of the end of each calendar year commencing with the year ending December 31, 1981, the cemetery owner shall be permitted to increase the fee for installation of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The charge for installation of a commodity by the cemetery owner shall be the same to all, regardless of the source of the commodity.

- (2) If the installation of an erect or flat marker requires the use of a base, the installation fee shall be calculated upon the ground covered by the base only.
- (3) If the fee charged by a cemetery owner for installation of a commodity exceeds the fee scale described in paragraph (1) of this rule, then the cemetery owner shall permit installation of the commodity by noncemetery personnel if requested by the lot owner, or the owner's representative, agent, or heirs or assigns.
- (4) The following method shall be used in calculating the annual consumer price index adjustment to the commodity installation fee.
- (a) In all cases, the consumer price index to be used shall be the "Consumer Price Index-All Urban Consumers (CPI-U), U. S. City Average, All Items, Not Seasonally Adjusted", as published by the Bureau of Labor Statistics, U. S. Department of Labor.
- (b) Beginning with the December 31, 1981 calculation, the annual calculations shall use the CPI-U table identified with the base period of 1967=100. The initial fee of \$0.10 shall be multiplied by the percentage change from the 1980 annual average to the 1981 annual average. That product shall be added to the initial fee of ten cents (\$0.10) to obtain the fee for 1982. Each subsequent year's calculation shall employ the same method, regardless of the base period of the table then in use. Calculations shall always be rounded to the nearest tenth of a cent or the nearest tenth of a percent.
1. The 1980 annual average was 246.8%.
 2. The 1981 annual average was 272.4%.
 3. The percentage change from 1980 to 1981 is 10.4%. The percentage change is calculated as:
(new percent - old percent)/old percent
 4. The fee of ten cents (\$0.10) is multiplied by 10.4%, resulting in a product of \$0.01.
 5. The fee for 1982 is the sum of \$0.10 + \$0.01 or \$0.11.
 6. The next year's calculation will be:

$$((1982 \text{ average} - 1981 \text{ average})/1981 \text{ average})(\$0.11)+\$0.11$$

or

$$((289.1-272.4)/272.4)(\$0.11)+\$0.11=(.061)(\$0.11)+\$0.11=$$

$$\$0.007+\$0.11 = \$0.117 \text{ fee for 1983}$$
- (c) Beginning with the December 31, 1988 calculation, the annual calculations shall use the CPI-U table identified with the base period of 1982-84=100. The values for both the 1988 annual average and the 1987 annual average shall come from this table. This table, and subsequent tables, shall be used until a new table with a new base period is published by the Bureau of Labor Statistics.

Authority: T.C.A. §§46-1-108(a) and (b) and 46-3-102(b)(2) and (3).

0780-7-2-.02 CONSUMER PRICE INDEX ADJUSTMENT FOR MEMORIAL CARE FEE.

- (1) Every cemetery company shall be permitted to charge a fee for the memorial care of every of every commodity installed in the cemetery. Such fee shall not exceed ten cents (\$0.10) per square inch of the ground covered by the commodity. As of the end of each calendar year commencing with the year ending December 31, 1981, the cemetery

company shall be permitted to increase its fee for the memorial care of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The fee charged for memorial care of a commodity shall not exceed the fee charged by the cemetery company for installation of the commodity. The charge for memorial care of a commodity shall be the same to all regardless of the source of the commodity.

- (2) The memorial care fee for an erect or flat marker which requires the use of a base shall be calculated upon the ground covered by the base only.
- (3) The method of calculating the annual consumer price index adjustment to the memorial care fee shall be the same as the method described in paragraph (4) of Rule 0780-7-2-.01.

Authority: T.C.A. §§ 46-1-108(a) and (b) and 46-2-302(c).

0780-7-2-.03 BUREAU OF LABOR STATISTICS CPI-U ANNUAL AVERAGES. The Bureau of Labor Statistics CPI-U annual averages can be accessed at the web site <http://stats.bls.gov/cpihome.htm>. The following tables contain the annual averages and percentage changes in annual averages for computation of consumer price index adjustments to the installation and memorial care fees.

Base Period 1967 = 100

Year	Annual Average	Percentage Change Average in Annual Average
1980	246.8	
1981	272.4	10.4%
1982	289.1	6.1%
1983	298.4	3.2%
1984	311.1	4.3%
1985	322.2	3.6%
1986	328.4	1.9%
1987	340.4	3.7%

Base Period 1982-84 = 100

1987	113.6	
1988	118.3	4.1%
1989	124.0	4.8%
1990	130.7	5.4%
1991	136.2	4.2%
1992	140.3	3.0%
1993	144.5	3.0%
1994	148.2	2.6%
1995	152.4	2.8%
1996	156.9	3.0%
1997	160.5	2.3%
1998	163.0	1.6%
1999	166.6	2.2%

Authority: T.C.A. §§46-1-108(a) and (b), 46-2-302(c), and 46-3-102(b)(2) and (3).

0780-7-2-.04 MEMORIAL CARE REQUIRED. A cemetery is required to provide memorial care whether or not the cemetery charges a memorial care fee. Memorial care is to be considered improvement care (T.C.A. § 46-1-102(11) and Rule 0780-7-1(11)) and improvement care is an obligation of the cemetery to be paid for from the improvement care fund.

Authority: T.C.A. §§46-1-102(11) and (16), 46-1-108(a) and (b), and 46-2-302(c).

0780-7-2-.05 SIGN REQUIRED AT CEMETERY. Each cemetery shall conspicuously post a sign either within one hundred (100) feet of the main public entrance to the cemetery grounds or outside the cemetery office (if the office is on the cemetery grounds). In the case of a sign near the public entrance, the lettering shall be not less than two (2) inches in height. In the case of a sign outside the cemetery office, the lettering shall be not less than one (1) inch in height. All such signs, regardless of where located, shall contain the words:

This cemetery is registered with the Tennessee Department of Commerce and Insurance.

Authority: T.C.A. § 46-1-108(a) and (b).

CHAPTER 0780-7-3 REGISTRATION AND FEES

NEW RULES

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0780-7-3-.01 Registration, Renewal, and Reinstatement	0780-7-3-.02 Examinations and Audits
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0780-7-3-.01 REGISTRATION, RENEWAL, AND REINSTATEMENT.

- (1) Upon approval of the application and receipt of a nonrefundable filing fee of three hundred dollars (\$300.00), the Commissioner shall issue a certificate of registration to the applicant.
- (2) Renewal of a certificate of registration may be effected at any time during the two (2) months preceding the date of expiration, upon submission of an application to the Commissioner on the prescribed form, accompanied by a renewal fee of three hundred dollars (\$300.00).
- (3) A certificate of registration becomes invalid if not renewed by the expiration date. After a certificate of registration has expired and has become invalid, a cemetery shall only be permitted to fulfill its preneed obligations for burials, to perform at need burials, and to perform basic maintenance of the cemetery property until the late renewal or reinstatement of the certificate of registration is effected.
- (4) The fee for late renewal of a certificate of registration shall be the renewal fee in paragraph (2) of this rule plus one hundred fifty dollars (\$150.00) for each month or fraction thereof the payment for renewal is delayed beyond the registration expiration date. No renewal application shall be accepted later than nine (9) months after the expiration date of a certificate of registration.
- (5) After the expiration of the nine-month period in paragraph (4) of this rule, a certificate of registration may be reinstated. The fee for reinstatement of a nonrenewed certificate of registration shall be two thousand dollars (\$2,000.00).

Authority: T.C.A. §§ 46-1-103, 46-1-104, and 46-1-108(a) and (b).

0780-7-3-.02 EXAMINATIONS AND AUDITS.

- (1) The necessary expense of any examination or audit made pursuant to T.C.A. Title 46, Chapter 2, Part 2 shall be paid by the cemetery company at the rate of three hundred dollars (\$300.00) per examiner/auditor, per day. The cemetery company shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (2) The necessary expense of any examination or audit made pursuant to T.C.A. Title 46, Chapter 2, Part 4 shall be paid by the cemetery company at the rate of three hundred dollars (\$300.00) per examiner/auditor, per day. The cemetery company shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (3) The cemetery company shall remit payment not later than sixty (60) days after the invoice date.

Authority: T.C.A. §§ 46-1-108(a) and (b), 46-2-205(b), and 46-2-410(f) and (g).

**CHAPTER 0780-7-4
COMMUNITY CEMETERIES, EXEMPTIONS**

NEW RULES

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0780-7-4-.01 Purpose	0780-7-4-.05 Access to Books, Records, and Papers
0780-7-4-.02 Criteria for Grant of Exemption	0780-7-4-.06 Improvement Care Trust Fund, Deposits
0780-7-4-.03 Request for Exemption	0780-7-4-.07 Revocation of Exemption
0780-7-4-.04 Notice of Changes to Exempted Cemetery Information	

0780-7-4-.01 PURPOSE. The Commissioner is authorized by T.C.A. § 46-1-106(b) to extend the exemption from cemetery registration and trusting requirements contained in T.C.A. Title 46, Chapters 1 and 2 to community cemeteries when certain criteria are met. The purpose of this chapter is to set out the conditions for the grant of such exemptions.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-108(a) and (b).

0780-7-4-.02 CRITERIA FOR GRANT OF EXEMPTION. The Commissioner has the discretion to grant an exemption to a community cemetery after taking into consideration the intent of T.C.A. Title 46, Chapter 1 and factors including, but not limited to, the following:

- (1) The age of the cemetery;
- (2) The remaining area for future use;
- (3) The sale of lots over the preceding ten (10) years and the price at which sold;
- (4) The population of the community normally served by the cemetery;
- (5) Whether a community cemetery association has been formed and such association has been incorporated or has been granted tax exempt status;
- (6) The historic nature of the cemetery and/or its environs;

- (7) Whether a trust fund has been established for the maintenance and upkeep of the cemetery; and
- (8) The source or sources of funds used for the maintenance and upkeep of the cemetery.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a) and (b).

0780-7-4-.03 REQUEST FOR EXEMPTION. The request for the grant of an exemption shall be submitted in typewritten form on 8 ½ " x 11" paper by a person in responsible charge of the cemetery and shall contain the following information:

- (1) The name and address of the cemetery, or the description of its location if it has no street address;
- (2) The name, address, and telephone number of the person in responsible charge of the cemetery who is submitting the application on behalf of the cemetery;
 - (a) A statement as to whether a cemetery association has been formed and incorporated or is to be incorporated, and, if so, a copy of the charter and by-laws of the association and the names, addresses, and telephone numbers of the officers and directors of the association; and
 - (b) A statement as to whether the cemetery association has been granted tax exempt status, and, if so, documentation of such status;
- (3) A statement as to whether a trust fund or a not-for-profit general welfare trust corporation pursuant to T.C.A. Title 46, Chapter 7, has been, or is to be, created for the maintenance and upkeep of the cemetery, and, if so, the name, address, and telephone number of the trustee appointed or to be appointed and a copy of the trust agreement or a copy of the charter and by-laws of the trust corporation with the names, addresses, and telephone numbers of the officers and directors of the corporation;
- (4) Identification of the source of funds (i.e. lot sales, donations, bequests, or other contributions) used for the maintenance and upkeep of the cemetery, the method used to account for such funds, and the frequency of audits and/or examinations of financial records of the cemetery and trustee, and by whom such audits and/or examinations are performed;
 - (a) For lot sales, identifying the percentage of the lot sale price which is deposited into the trust fund;
 - (b) For donations, bequests, and other contributions, identifying the percentage which is deposited into the trust fund;
- (5) The age of the cemetery;
- (6) A description of the historic nature of the cemetery and/or its environs, if applicable;
- (7) The remaining area for future use and, if different, the remaining area for future sales;
- (8) The sale of lots, by number of lots sold per year, over the preceding ten (10) years and the price or prices at which sold; and
- (9) The population of the community normally served by the cemetery.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a) and (b).

0780-7-4-.04 NOTICE OF CHANGES TO EXEMPTED CEMETERY INFORMATION.

- (1) With respect to the exempt community cemetery and/or its trust corporation, if applicable, the Commissioner shall be notified in writing within ten (10) days of the effective date of any change in:
 - (a) The corporate charter;
 - (b) The corporate by-laws;
 - (c) The officers and/or directors of the corporation;
 - (d) The tax exempt status;
 - (e) The corporate registration status with the Tennessee Secretary of State;
 - (f) The terms of the trust agreement; and
 - (g) The amount of land dedicated to cemetery purposes.
- (2) Such notice of change shall be submitted in writing to Burial Services, Tennessee Department of Commerce and Insurance and shall include copies of all documents affected by such change.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-108(a) and (b).

0780-7-4-.05 Access to Books, Records, and Papers. The grant of an exemption notwithstanding, the Commissioner or the Commissioner's duly authorized representatives shall be granted upon demand, full and immediate access to the books, records, and papers of the cemetery and/or its trustee which pertain to the financial affairs of the cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-108(a) and (b).

0780-7-4-.06 IMPROVEMENT CARE TRUST FUND, DEPOSITS.

- (1) As a condition precedent to the grant of an exemption under this Chapter, a community cemetery shall deposit all funds for the maintenance and upkeep of the cemetery into an improvement care trust fund. The trust fund shall be overseen by an independent third party trustee or a not-for-profit general welfare trust corporation created pursuant to T.C.A. Title 46, Chapter 7.
- (2) Only the interest and earnings shall be withdrawn from the trust fund for the maintenance and upkeep of the cemetery. Withdrawals from the trust fund shall be made for no other purpose other than reasonable compensation to the trustee, which shall in no event exceed the amount of interest earned.
- (3) The trust agreement shall state the percentage of a lot sale price which shall be deposited into the trust fund. In no event shall the percentage be less than twenty percent (20%).
- (4) Donations, bequests, and other contributions shall be deposited into the trust fund in the amount or percentage designated by the donor, or, in the event that no amount or percentage is specified, then one hundred percent (100%) of the donation, bequest, or other contribution shall be deposited into the trust fund.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a) and (b).

0780-7-4-.07 REVOCATION OF EXEMPTION. Under the authority of T.C.A. § 46-1-106(b), the Commissioner may at any time revoke any exemption granted to a community cemetery.

Authority: T.C.A. §§ 46-1-106(b) and 46-1-108(a) and (b).

CHAPTER 0780-7-5 CIVIL PENALTIES

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0780-7-5-.01 Civil Penalties

0780-7-5-.01 CIVIL PENALTIES.

- (1) With respect to any person, partnership, firm, association, or corporation required to comply with the provisions of Tennessee Code Annotated, Title 46, or rules promulgated thereunder, or granted an exemption under T.C.A. § 46-1-106(b), the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule, or order pertaining to such provisions in accordance with the following schedule:

Violation	Penalty
T.C.A. § 46-1-107(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-101(b)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-103	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-201(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-201(b)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-202	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-204	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-302(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-302(b)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-302(c)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-302(d)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-302(e)(1)(A)	Not more than \$1,000.00 nor less than \$100.00

T.C.A. § 46-2-302(e)(2)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-302(f)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-304	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-305	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-306(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-311	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-402(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-402(b)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(b)(2)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(c)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(d)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(e)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(f)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(g)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-403(h)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-404	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-405	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-406(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-406(c)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-407(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-407(b)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-408	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-2-410(b)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-3-102(a)(3)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-3-102(b)(1)	Not more than \$1,000.00 nor less than \$100.00

T.C.A. § 46-3-102(b)(2)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-3-102(b)(3)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-3-102(b)(4)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-3-112(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-8-103(a)	Not more than \$1,000.00 nor less than \$100.00
T.C.A. § 46-8-103(b)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.01(1)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.01(2)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.01(3)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.02(1)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.02(2)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.04	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-2-.05	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-3-.02(3)	Not more than \$200.00 nor less than \$25.00
Rule 0780-7-4-.04	Not more than \$100.00 nor less than \$25.00
Rule 0780-7-4-.05	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-4-.06(1)	Not more than \$1,000 nor less than \$100.00
Rule 0780-7-4-.06(2)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-4-.06(3)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-7-4-.06(4)	Not more than \$1,000.00 nor less than \$100.00

- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:
 - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;

- (d) The economic benefits gained by the violator as a result of noncompliance;
- (e) Whether the violator shows remorse; and
- (f) The interest of the public.

Authority: *T.C.A. § 46-1-108(a), (b), and (d).*

CHAPTER 0780-8-1 DEFINITIONS

NEW RULES

TABLE OF CONTENTS

0780-8-1-.01 DEFINITIONS.

- (1) “Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner’s designee.
- (2) “Board” means the Board of Funeral Directors and Embalmers for the State of Tennessee.
- (3) “Contract Seller” means and shall include natural persons, partnerships, firms, associations, and corporations residing in or doing business in this state (which includes issuing or performing wholly or in part in this state any incident of a “Preneed Funeral Service Contract”), who engage in the business of selling “Preneed Funeral Service Contracts”.
- (4) “Contract Buyer” means any person (such person may or may not be a “Contract Beneficiary”) who purchases a “Preneed Funeral Service Contract” from a “Contract Seller”.
- (5) “Contract Beneficiary” means any natural person specified or included in a “Preneed Funeral Service Contract”, upon whose death funeral services and/or funeral merchandise shall be performed, provided, or delivered.
- (6) “Financial Institution” means a bank or trust company which is authorized to do business in this state, or a federally insured savings and loan association or a federally insured savings bank.
- (7) “Funds” means money paid pursuant to a Preneed Funeral Service Contract.
- (8) “Person” means, according to the context, any individual, association, partnership, corporation, or any other organization or entity.
- (9) “Preneed Funeral Service Contract”, “Preneed Funeral Contract”, or “Preneed Contract” means any agreement, contract, or plan which is described in T.C.A. § 62-5-401.
- (10) “Trust Funds” means funds deposited by a Contract Seller with a Trustee.
- (11) “Trust Instrument” means the document or documents pursuant to which a Trustee receives, holds, invests, and disburses Trust Funds.
- (12) “Trustee” means any third person who holds funds pursuant to a Trust Instrument. The term Trustee shall not include:

- (a) a Contract Seller; or
- (b) anyone employed by, or directly involved with, the Contract Seller in his business of selling Preneed Funeral Service Contracts.

Authority: T.C.A. § 62-5-405(a) and (b).

CHAPTER 0780-8-2 GENERAL PROVISIONS

NEW RULES

TABLE OF CONTENTS

0780-8-2-.01 Purpose	0780-8-2-.07 Trust Instruments
0780-8-2-.02 Scope	0780-8-2-.08 Deposit of Funds
0780-8-2-.03 Exemptions	0780-8-2-.09 Investment of Trust Funds
0780-8-2-.04 Records	0780-8-2-.10 Revocation of Trust Account
0780-8-2-.05 Examination of Records	0780-8-2-.11 Outstanding Contracts
0780-8-2-.06 Annual Reports	

0780-8-2-.01 PURPOSE. These are promulgated for the purpose of administering the provisions of T. C. A. Title 62, Chapter 5, Part 4, relative to contracts for future funeral services.

Authority: T.C.A. § 62-5-405(a) and (b).

0780-8-2-.02 SCOPE. These rules shall apply to any agreement, contract, or plan requiring the payment of money in advance, whether in a lump sum or installments, which is made or entered into with any person, association, partnership, firm, or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the use of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required. Any financial institution which holds funds pursuant to T.C.A. § 62-5-401 shall also be governed by these rules.

Authority: T.C.A. §§ 62-5-401 and 62-5-405(a) and (b).

0780-8-2-.03 EXEMPTIONS. Nothing in these rules shall apply to cemetery lots or permanent grave or crypt markers, nor shall burial associations where the certificate for burial benefits does not exceed one hundred dollars (\$100.00) be governed by such rules. Contracts of insurance subject to regulation the Department of Commerce and Insurance of the State of Tennessee shall not be governed by these rules. Nothing in these rules shall be construed as in conflict with T. C. A. Title 46, as amended.

Authority: T.C.A. §§ 62-5-405(a) and (b) and 62-5-408.

0780-8-2-.04 RECORDS.

- (1) All contract sellers and trustees shall keep accurate accounts, books, and records in this state concerning transactions regulated under these rules.

- (2) (a) A contract seller's accounts, books, and records shall include:
 1. copies of all preneed contracts;
 2. the dates and amounts of payments made and accepted thereon;
 3. the name and address of each contract buyer;
 4. the name of the contract beneficiary of each preneed contract; and
 5. the name of the trustee holding the trust funds received under each contract.
- (b) A trustee's accounts, books, and records shall include:
 1. the name of the contract seller;
 2. the amount and date of receipt of all funds received from the contract seller; and
 3. a record of all disbursements.
- (3) A contract seller shall retain all required accounts, books, and records pertaining to each preneed contract for at least two (2) years after the date of performance or termination. Such accounts, books, and records shall be available for inspection by contract buyers during normal business hours at the contract seller's place of business.

Authority: T.C.A. § 62-5-405(a) and (b).

0780-8-2-.05 EXAMINATION OF RECORDS. All contract sellers and trustees shall make all accounts, books, and records required to be kept under Rule 0780-8-2-.04 available to the Commissioner for the purpose of examination or audit. The Commissioner may examine or audit such accounts, books, and records whenever the Commissioner deems necessary for the protection of contract buyers or beneficiaries.

Authority: T.C.A. § 62-5-405(a) and (b).

0780-8-2-.06 ANNUAL REPORTS. All contract sellers and trustees shall, no later than March 15 of each year, file an annual report with the Commissioner on such forms as the Commissioner may prescribe. Such report shall include a summary of the information contained in the accounts, books, and records required to be kept under Rule 0780-8-2-.04, and such other information as the Commissioner may reasonably require.

Authority: T.C.A. § 62-5-405(a) and (b).

0780-8-2-.07 TRUST INSTRUMENTS.

- (1) Each trust instrument, and any amendments thereto, shall be filed with the Commissioner. Each trust instrument shall specify:
 - (a) the name of the contract seller;
 - (b) the name of the trustee;

- (c) the trustee's duties in conformance with the provisions of these rules;
 - (d) the basis for determining the trustee's fee (if any); and
 - (e) any other appropriate terms of the trusteeship.
- (2) Each trust instrument shall bind the trustee to make available at reasonable times and places, on request by a contract buyer, the trustee's records of the trust account established pursuant to the contract buyer's preneed contract.
 - (3) The Commissioner may require alterations or additions to a trust instrument if the Commissioner finds that it is not in accord with the provisions of these rules.

Authority: T.C.A. §62-5-405(a) and (b).

0780-8-2-.08 DEPOSIT OF FUNDS.

- (1) Contract sellers shall deposit all funds received on account of a preneed contract as soon as possible after receipt, and in no event later than thirty (30) days after receipt.
- (2) All deposits of funds with a trustee shall be in cash only pursuant to a trust instrument; provided, however, that, at any time, a contract seller may change the trustee of its trust funds.

Authority: T.C.A. § 62-5-405(a) and (b).

0780-8-2-.09 INVESTMENT OF TRUST FUNDS.

- (1) A financial institution acting as trustee of trust funds under these rules shall invest such funds in accordance with applicable law. In so investing, such trustee shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.
- (2) An individual acting as a trustee of trust funds under these rules shall not, after depositing such funds with a financial institution, withdraw the trust funds for any purpose other than payment for funeral merchandise or service and refund of any balance remaining as provided by law. However, such individual trustee may transfer trust funds to another financial institution or successor trustee.
- (3) Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the interest or earnings on the funds.

Authority: T.C.A. §§62-5-401, 62-5-402, and 62-5-405(a) and (b).

0780-8-2-.10 REVOCATION OF TRUST ACCOUNT. A financial institution holding trust funds in a revocable trust account shall promptly notify the contract seller if a contract buyer exercises the right under T.C.A. § 62-5-403(b) to withdraw any or all of such funds.

Authority: T.C.A. § 62-5-405(a) and (b).

0780-8-2-.11 OUTSTANDING CONTRACTS. The provisions of these rules relating to trustees and investment of trust funds shall apply to the disposition of all proceeds from preneed contracts issued and outstanding from March 25, 1963.

Authority: T.C.A. § 62-5-405(a) and (b).

**CHAPTER 0780-8-3
PRENEED FUNERAL CONTRACTS**

NEW RULES

TABLE OF CONTENTS

0780-8-3-.01 Preneed Contract Provisions

0780-8-3-.01 PRENEED CONTRACT PROVISIONS.

(1) After October 11, 1986, no contract seller shall use a preneed contract form unless the contract seller has submitted the form to the Commissioner, and the Commissioner has approved the form after April 16, 1986.

(2) Every preneed contract shall contain at least the following:

(a) A statement as to whether the contract establishes a revocable trust account or an irrevocable trust account;

1. If such trust account is revocable, a statement that the purchaser of the merchandise and/or services under the contract shall be entitled to receive any or all of the payments made and any earnings or interest thereon upon demand on the trustee prior to the death of the contract beneficiary;

2. If such trust account is irrevocable, the contract shall state on its face and in boldface type and all uppercase letters the following:

THE TRUST ACCOUNT ESTABLISHED BY THIS CONTRACT IS IRREVOCABLE, AND THE FUNDS PAID HEREUNDER ARE NOT REFUNDABLE. ACCUMULATED TRUST PRINCIPAL AND INTEREST ARE FREELY TRANSFERABLE TO SATISFY FUNERAL EXPENSES AT ANY LICENSED FUNERAL ESTABLISHMENT AS PROVIDED BY LAW.

(b) A clear disclosure as to whether the funds identified as having been paid or are to be paid:

1. are to be applied to the price of funeral merchandise and services to be selected by a designated person at the time of death of the person for whom the funds were paid. In the event this condition applies, the contract shall state on its face in boldface type and uppercase letters, the following:

_____ **IF THE AMOUNT IN THE
(Purchaser's Signature)**

TRUST ACCOUNT EXCEEDS THE PREVAILING PRICE (AT THE TIME OF SELECTION) OF THE FUNERAL MERCHANDISE AND SERVICES SELECTED, THE BALANCE REMAINING SHALL BE REFUNDED TO _____ (Name)

2. fully pay for the funeral merchandise and services (or their equivalent) identified therein; or

3. fully pay for the funeral merchandise and services (or their equivalent) identified therein, if and only if the prevailing price thereof at the time of the death of the contract beneficiary does not exceed the amount in the trust account at that time.
- (c) A means whereby the purchaser can indicate his or her choice of either paying or not paying any applicable sales or use tax for the related merchandise or services at the time the contract is entered into;
 - (d) A complete disclosure of the pricing arrangement and of any contingent liabilities or costs of the buyer;
 - (e) A disclosure that, upon the death of the contract beneficiary, the trustee shall release an amount equal to the agreed purchase price to the contract seller upon proof of death of the contract beneficiary and verification that all of the terms of the preneed contract have been fully performed by the contract seller;
 - (f) A disclosure that the trustee shall pay any balance remaining in the trust fund after payment for the funeral merchandise and services in accordance with the preneed contract:
 1. to the contract buyer or his estate, if such merchandise and services are itemized in the contract; or
 2. to the person designated by the contract buyer in the boldface disclosure required by part (2)(b)1. of this rule, if selection of such merchandise and services is deferred until the death of the contract beneficiary.
 - (b) A disclosure that the contract, books, records, and accounts pertaining to the contract buyer's contract shall be available for inspection by the contract buyer at the contract seller's place of business during normal working hours;
 - (c) A disclosure of the identity and address of the trustee for the purchaser's funds and that notification to purchasers need not be made upon change of trustees so long as this information is available upon request; and
 - (d) A disclosure that if the buyer and seller agree upon a reasonable fee for the trustee, such fee will be paid in the manner prescribed by these rules.
- (2) No preneed contract form shall contain:
 - (a) a provision specifying any particular investment of trust funds; or
 - (b) any provision not in compliance with T. C. A. Title 62, Chapter 5, Part 4, or any of these rules.
 - (3) The contract seller shall give to the contract buyer a copy of the preneed contract, and any amendment thereto, at the time of its execution.
 - (4) No approval of a preneed contract form by the Commissioner shall be used for advertising or promotional purposes.
 - (5) As soon as possible after the submission of a proposed preneed contract form pursuant to this rule, the Commissioner shall approve or disapprove the form in writing; provided, however, that a preneed contract form shall be deemed approved unless disapproved within sixty (60) days after its receipt. In the event that the Commissioner disapproves a preneed contract form, the Commissioner shall specify in what respect such form does not meet the requirements of law.

Authority: T.C.A. §§62-5-403 and 62-5-405(a) and (b).

**CHAPTER 0780-8-4
REGISTRATION, AUDITS, AND FEES**

NEW RULES

TABLE OF CONTENTS

0780-8-4-.01 Registration of Contract Sellers, Fees
0780-8-4-.02 Annual Audits, Fees

0780-8-4-.01 REGISTRATION OF CONTRACT SELLERS, FEES.

- (1) Effective October 1, 1986, no person, association, partnership, firm, or corporation shall act as a contract seller without a valid certificate of registration issued by the Commissioner.
- (2) An application for registration as a contract seller shall be submitted on the form prescribed by the Commissioner, and shall be accompanied by a nonrefundable fee of three hundred dollars (\$300.00).
- (3) All contract seller registrations shall be effective for one (1) year.
- (4) On and after the effective date of this rule, all contract seller registrations not expiring on September 30 of each year shall expire on the anniversary of the initial registration. A certificate of registration may be renewed at any time during the two (2) months preceding such date by filing the prescribed form with the Commissioner and paying a fee of three hundred dollars (\$300.00).
- (5) Certificates of registration not renewed by the expiration date are invalid and shall be subject to a penalty fee of two hundred dollars (\$200.00) for each month or portion thereof for which the renewal is delayed, for a maximum of two (2) months. The penalty fee is in addition to the renewal fee.
- (6) Certificates of registration shall not be renewed later than two (2) months after the expiration date of such certificate. Such certificates may be reinstated upon the submission of the proper form accompanied by a reinstatement fee of one thousand dollars (\$1,000.00).

Authority: T.C.A. § 62-5-405(a), (b), and (d).

0780-8-4-.02 ANNUAL AUDITS, FEES.

- (1) The Commissioner shall require an annual audit to ensure that each contract seller will be able to perform its contract with the purchaser.
- (2) The fee for the audit of preneed trust accounts shall be three hundred dollars (\$300.00) per auditor, per day. The contract seller shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (3) The contract seller shall remit payment to the Department not later than sixty (60) days after the invoice date.

Authority: T.C.A. §62-5-405(a), (b), and (c).

**CHAPTER 0780-8-5
CIVIL PENALTIES**

NEW RULES

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0780-8-5-.01 Civil Penalties

0780-8-5-.01 CIVIL PENALTIES.

- (1) With respect to any person, partnership, firm, association, or corporation required to comply with the provisions of T. C. A. Title 62, Chapter 5, Part 4, or rules promulgated thereunder, the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule, or order pertaining to such provisions in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-5-401	Not more than \$1,000.00 nor less than \$25.00
T.C.A. § 62-5-402(a)	Not more than \$1,000.00 nor less than \$25.00
T.C.A. § 62-5-402(b)	Not more than \$1,000.00 nor less than \$25.00
T.C.A. § 62-5-402(c)	Not more than \$1,000.00 nor less than \$25.00
T.C.A. § 62-5-403	Not more than \$1,000.00 nor less than \$25.00
T.C.A. § 62-5-404(b)	Not more than \$1,000.00 nor less than \$25.00
T.C.A. § 62-5-404(c)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.04(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.04(2)(a)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.04(2)(b)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.04(3)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.05	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.06	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.07(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.08(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.08(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.09(1)	Not more than \$1,000.00 nor less than \$25.00

Rule 0780-8-2-.09(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-2-.10	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-3-.01(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-3-.01(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-3-.01(3)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-3-.01(4)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-3-.01(5)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-4-.01(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-8-4-.02(3)	Not more than \$1,000.00 Nor less than \$25.00

- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:
 - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of noncompliance;
 - (e) Whether the violator shows remorse; and
 - (f) The interest of the public.

Authority: T.C.A. § 62-5-405(a), (b), and (e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-26)

BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of a new rule and amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204 and 63-5-105, and Public Chapter 927 of the Public Acts of 2000. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 19th day of September, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

NEW RULE

0460-1-.07 WORKING INTERVIEWS.

- (1) A dentist shall not conduct employment interviews with dentists, dental hygienists or dental assistants that include any patient care unless the dentist visually inspects and verifies the dentist's, dental hygienist's or dental assistant's current and unrestricted authorization to practice their profession in Tennessee.
- (2) A licensee's failure to comply with the provisions of this rule shall constitute unprofessional conduct and subject the licensee to disciplinary action pursuant to Rule 0460-1-.06.
- (3) An applicant's failure to comply with the provisions of this rule shall constitute unprofessional conduct and subject the applicant to licensure denial pursuant to Rule 0460-1-.04.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-107, and 63-5-116.

AMENDMENTS

Part (4) (b) 2. of Rule 0460-1-.03, Board Officers, Consultants, Records, and Meetings, is amended by deleting the words "informal" and "informally."

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-1-.04, Application Review, Approval, Denial, Interviews, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Completed applications received in the Board Administrative Office shall be submitted to a member of the Board or the Board consultant for review.
 - (a) An initial determination as to issuance or denial of the application shall be made after the application file is complete. Each member of the Board and the Board consultant is vested with the authority to make these initial determinations.
 - (b) Applicants who, by virtue of any criteria for licensure in the areas of mental, physical, moral or educational capabilities as contained in the application and review process which indicates derogatory information or a potential risk to the public health, safety and welfare, may be required to present themselves to the Board for an interview before final licensure may be granted. If sufficient cause exists, an applicant may be required to submit to a mental and/or physical examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-111, 63-5-124.

Rule 0460-1-.06, Disciplinary Actions, Civil Penalties, Informal Settlements, Procedures, and Declaratory Orders is amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-1-.06, Disciplinary Actions, Civil Penalties, Informal Settlements, Procedures, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following new catchline, and is further amended by adding the following language as new, appropriately numbered paragraphs, so that as amended, the new catchline, and the new, appropriately numbered paragraphs shall read:

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

- (1) Assessment of Costs - The imposition of a requirement that any person against whom sanctions have been imposed as a result of a disciplinary action pay the actual and reasonable costs of the prosecution of the case. When the Board, in any final order, requires the “payment of costs”, that requirement includes payment of the following:
 - (a) All costs attributed to and assessed against the Board by the Division’s Bureau of Investigations in connection with the prosecution of the matter including all investigator time, travel and lodging incurred during the prosecution.
 - (b) All costs assessed against the Board by the Division for the use of the Division facilities and personnel for prosecution of the matter.
 - (c) All costs assessed against the Board for the appearance fees, transcripts, time, travel and lodging of administrative law judges and court reporters and witnesses required in the prosecution of the matter.
- (2) Subpoenas
 - (a) Purpose - Although this rule applies to persons and entities other than dentists, it is the Board’s intent as to dentists that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly proscribed. Such power shall not be used by the division or board investigators to seek other incriminating evidence against dentists when the Division or Board does not have a complaint or basis to pursue such an investigation. Thus, unless the division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, then no subpoena as contemplated herein shall issue.

(b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:

1. Probable Cause

- (i) For Investigative Subpoenas - shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of T.C.A. §§ 63-5-101, et seq., or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or items to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.
- (ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

2. Presiding Officer - For investigative subpoenas shall mean any elected officer of the board.

(c) Procedures

1. Investigative Subpoenas

- (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.
- (ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:
 - (I) The time frame in which issuance is required so the matter can be timely scheduled; and
 - (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the Division or Board.
 - I. In no event shall such subpoena be broadly drafted to provide investigative access to dental records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or board consideration of a dentist's conduct, act, or omission.
 - II. If the subpoena relates to the prescribing practices of a licensee, then it shall be directed solely to the records of the patient(s) who received the pharmaceutical agents and whom the Board of Pharmacy or issuing pharmacy(ies) has so identified as recipients; and

- (III) Whether the proceedings for the issuance are to be conducted by physical appearance or electronic means; and
 - (IV) The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed.
- (iii) The Board's Unit Director shall cause to have the following done:
- (I) In as timely a manner as possible, arrange for an elected officer of the board to preside and determine if issuing the subpoena should be recommended to the full Board; and
 - (II) Establish a date, time and place for the proceedings to be conducted and notify the presiding officer, the applicant and the court reporter; and
 - (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
 - I. Preserve a verbatim record of the proceeding; and
 - II. Prevent the person presiding over the proceedings from being allowed to participate in any manner in any disciplinary action of any kind, formal or informal, which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
- (I) The applicant shall do the following:
 - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
 - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
 - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
 - A. The name and address of the person for whom the subpoena is being sought or who has possession of the, items being subpoenaed; and
 - B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought if that location is known; and
 - C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and
 - D. The date, time and place for compliance with the subpoena.
 - IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.

- (II) The Presiding Officer shall do the following:
- I. Have been selected only after assuring the Board's Unit Director that he or she has no prior knowledge of or any direct or indirect interest in or relationship with the person(s) being subpoenaed and/or the licensee who is the subject of the investigation; and
 - II. Commence the proceedings and swear all necessary witnesses; and
 - III. Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings and present to the full Board only that evidence necessary for an informed decision; and
 - IV. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
 - V. Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full Board; and
 - VI. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for consideration of issuance of subpoenas in the matter.

(III) The Board shall do the following:

- I. By a vote of two thirds (2/3) of the Board members, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and
 - II. Sign the subpoena as ordered to be issued, quashed or modified.
2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case hearing pursuant to Title 4, Chapter 5 of the Tennessee Code Annotated, this definition shall not apply. All such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoena shall be issued on forms approved by the Board.
2. The subpoena forms may be obtained by contacting the Board's Administrative Office.

- (e) Subpoena Service – Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-311, 63-5-105, 63-5-124, and Public Chapter 927 of the Public Acts of 2000.

Rule 0460-2-.03, Educational Licensure Process, is amended by deleting paragraph (8) in its entirety and substituting instead the following language, so that as amended, the new paragraph (8) shall read:

- (8) An applicant must successfully complete the Board's jurisprudence examination as provided in rule 0460-2-.05.

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

Rule 0460-2-.06, Specialty Certification, is amended by deleting subparagraph (2) (a), parts (2) (c) 1., (5) (a) 1. and (6) (a) 1., subparagraph (7) (a), paragraph (8), subpart (9) (a) 1. (v), and parts (10) (a) 1. and (11) (a) 1. in their entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (a), parts (2) (c) 1., (5) (a) 1. and (6) (a) 1., subparagraph (7) (a), paragraph (8), subpart (9) (a) 1. (v), and parts (10) (a) 1. and (11) (a) 1. shall read:

- (2) (a) An applicant shall obtain a specialty application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form or this rule to the Board Administrative Office.
- (2) (c) 1. Submit the specialty examination fee as provided in rule 0460-1-.02 (1) and cause to be submitted directly from the school to the Board Administrative Office proof of all educational qualifications and documentation required by the paragraph of this rule which governs the branch of dentistry in which the specialty certification is sought; or
- (5) (a) 1. Certification of successful completion of at least two (2) years of postgraduate training in Endodontics at the university level in a program approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (6) (a) 1. Certification of successful completion of advanced study in Oral and Maxillofacial Surgery of four (4) years or more in a graduate school or hospital recognized by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (7) (a) Required Documentation - An applicant must submit certification of successful completion of two (2) years of postgraduate training in Oral Pathology at the university level in a program approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (8) Orthodontics and Dentofacial Orthopedics - An applicant must submit, with the application form, documentation of successful completion of one (1) of the following:
- (a) Certification of successful completion of two (2) academic years of training in orthodontics and dentofacial orthopedics in an approved Postgraduate Department of an accredited dental school, college or university. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (b) Certification of successful completion of an organized preceptorship training program in orthodontics and dentofacial orthopedics approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a

notarized certificate of completion furnished by the Board and issued by the director of the preceptorship training program, to be submitted directly from the school to the Board Administrative Office.

- (9) (a) 1. (v) Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (10) (a) 1. Certification of successful completion of at least two (2) years of postgraduate training in periodontics at the university level in a program approved by the Commission on Dental Education of the American Dental Association and by the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (11) (a) 1. Certification of successful completion of at least two (2) years of a postdoctoral education in Prosthodontics in a program approved by the Commission on Dental Accreditation of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-112.

Rule 0460-2-.08, Licensure Renewal, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Any licensee who receives notice of administrative revocation may, within sixty (60) days of the expiration date of the license, execute and file in the Board's administrative office an affidavit of retirement pursuant to Rule 0460-2-.09 which will effectively retire the license as of the date the affidavit of retirement was received by the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-117, and 63-5-129.

Rule 0460-3-.01, Licensure Process, is amended by deleting paragraph (3), in its entirety and substituting instead the following language, so that as amended the new paragraph (3) shall read:

- (3) An applicant shall submit:
 - (a) proof of having attained at least eighteen (18) years of age; and
 - (b) a signed "passport" style photograph taken within the preceding twelve (12) months.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-114.

Rule 0460-3-.02, Criteria Approval Licensure Process (Reciprocity), is amended by deleting paragraph (4) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (14) in its entirety and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraph (4) shall read:

- (4) An applicant shall submit:
 - (a) proof of having attained at least eighteen (18) years of age; and

- (b) a signed “passport” style photograph taken within the preceding twelve (12) months.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-111, and 63-5-114.*

Rule 0460-3-.03, Educational Licensure Process, is amended by deleting paragraphs (3) and (7) in their entirety and substituting instead the following language, so that as amended the new paragraphs (3) and (7) shall read:

- (3) An applicant shall submit:
 - (a) proof of having attained at least eighteen (18) years of age; and
 - (b) a signed “passport” style photograph taken within the preceding twelve (12) months.
- (7) An applicant must successfully complete the Board’s jurisprudence examination as provided in rule 0460-3-.05.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-111, and 63-5-114.*

Rule 0460-3-.07, Licensure Renewal, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Any licensee who receives notice of administrative revocation may, within sixty (60) days of the expiration date of the license, execute and file in the Board’s administrative office an affidavit of retirement pursuant to Rule 0460-3-.08 which will effectively retire the license as of the date the affidavit of retirement was received by the Board.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-117, and 63-5-129.*

Rule 0460-4-.06, Registration Renewal, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Any registrant who receives notice of administrative revocation may, within sixty (60) days of the expiration date of the registration, execute and file in the Board’s administrative office an affidavit of retirement pursuant to Rule 0460-4-.07 which will effectively retire the registration as of the date the affidavit of retirement was received by the Board.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-117, and 63-5-129.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-33)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF AIR POLLUTION CONTROL

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations regarding Chapter 1200-3-16 New Source Performance Standards pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 8th Floor Conference Room of the L & C Tower, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 20th day of September, 2000.

Written comments will be included in the hearing records if received by the close of business September 20, 2000, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to (September 20, 2000) or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298)

If you have any questions about the origination of this rule change, you may contact Mr. Barry Stephens at 1-800-511-7991. For complete copies of the text of the notice, please contact Mr. Malcolm Butler, Department of Environment and Conservation, 8th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, telephone 615-532-0600.

SUBSTANCE OF PROPOSED AMENDMENTS

Rule 1200-3-16-.01 General Provisions is amended by adding the following language (a new paragraph (12) The Technical Secretary shall establish on all construction and operating permits issued after (effective date), New Source Standards and Requirements for air contaminant sources subject to the New Source Performance Standards (NSPS) as defined in Chapter 1200-3-2. The term "New Source Standards and Requirements" means a standard for emissions of air contaminants which reflects the degree of emissions limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reductions and any non-air quality health and environmental impact and energy requirements) the Technical Secretary determines has been adequately demonstrated. Under no circumstances shall the Technical Secretary's determination be less stringent than the federal requirements.), so that, as amended, the new paragraph (12) shall read:

- (12) The Technical Secretary shall establish on all construction and operating permits issued after (effective date), New Source Standards and Requirements for air contaminant sources subject to the New Source Performance Standards (NSPS) as defined in Chapter 1200-3-2. The term "New Source Standards and Requirements" means a standard for emissions of air contaminants which reflects the degree of emissions limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reductions and any non-air quality health and environmental impact and energy requirements) the Technical Secretary determines has been adequately demonstrated. Under no circumstances shall the Technical Secretary's determination be less stringent than the federal requirements.

Authority: T.C.A. §§68—25—105 and 4—5—202.

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-31)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF AIR POLLUTION CONTROL

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations, Title V Program, and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 8th Floor Conference Room of the L & C Tower, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 20th day of September, 2000.

Written comments will be included in the hearing records if received by the close of business September 20, 2000, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to (September 20, 2000) or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298)

If you have any questions about the origination of this rule change, you may contact Mr. Barry Stephens at 1-800-511-7991. For complete copies of the text of the notice, please contact Mr. Malcolm Butler, Department of Environment and Conservation, 8th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, telephone 615-532-0600.

SUBSTANCE OF PROPOSED CHANGE

CHAPTER 1200-3-26
ADMINISTRATIVE FEES SCHEDULE

AMENDMENT

Subparagraph (d) of paragraph (9) of rule 1200-3-26-.02 Construction and Annual Emission Fees is amended by deleting the current subparagraph (d) and substituting a new subparagraph (d) in its place with the following language "The rate at which major source actual based annual emission fees are assessed shall be \$25 per ton for the annual accounting period July 1, 2000 to June 30, 2001. The rate at which major source allowable based annual emission fees are assessed shall be \$15.00 per ton for the annual accounting period July 1, 2000 to June 30, 2001. An annual revision must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates shall be supported by the Division's annual workload analysis that is approved by the Board." so that, as amended, the new subparagraph shall read:

- (d) The rate at which major source actual based annual emission fees are assessed shall be \$25 per ton for the annual accounting period July 1, 2000 to June 30, 2001. The rate at which major source allowable based annual emission fees are assessed shall be \$15.00 per ton for the annual accounting period July 1, 2000 to June 30, 2001. An annual revision must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates shall be supported by the Division's annual workload analysis that is approved by the Board.

Authority: T.C.A. §68-201-105 and, 4-5-202 et. seq. 1990.

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-30)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.D.T. on the 15th day of September, 2000.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0155 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 729 Church Street, Nashville, Tennessee 37247-6501 or call (615) 741-0145.

SUBSTANCE OF PROPOSED RULES

Paragraph (1) of rule 1200-13-12-.04 Covered Services is amended by adding a new subparagraph (z) which shall read as follows:

(z) **Reconstructive Breast Surgery**

In accordance with Tennessee Public Chapter 452 which requires coverage of all stages of reconstructive breast surgery on a diseased breast as a result of a mastectomy as well as any surgical procedure on the non-diseased breast deemed necessary to establish symmetry between the two breasts in the manner chosen by the physician.

Paragraph (7) of rule 1200-13-12-.10 Exclusions is deleted in its entirety and replaced with a new paragraph (7) which shall read as follows:

- (7) **Weight reduction programs; by-pass surgery (unless medically necessary), or gastric stapling (unless medically necessary);**

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-34)

**DEPARTMENT OF HEALTH - 1200
TENNESSEE MEDICAL LABORATORY BOARD**

There will be a hearing before the Tennessee Board Medical Laboratory Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 18th day of September, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-6-3-.15, Alternate Site Testing, is amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (b) shall read:

- (3) (b) The results of the screening program testing must be submitted to the personal physician of the individual being screened or reviewed by the physician responsible for the screening program. During the screening process, the individual being screened must be afforded reasonable privacy and, when required, on-site confidential counseling about the results of the testing.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, and 68-29-105.

Rule 1200-3-.16, Waived Testing, is amended by deleting the introductory sentence to paragraph (3) in its entirety and substituting instead the following language, and is further amended by deleting subparagraphs (3) (c) and (3) (f) in their entirety and substituting instead the following language, so that as amended, the new introductory sentence to paragraph (3) and the new subparagraphs (3) (c) and (3) (f) shall read:

- (3) Clinical laboratories and other health care facilities licensed by the State of Tennessee who perform waived testing must comply with the following minimum guidelines:
 - (3) (c) In the absence of a Medical Laboratory Director as defined by the Tennessee Medical Laboratory Act, T.C.A. § 68-29-103, performance of waived testing must be approved by the physician legally responsible for laboratory testing performed by that health care facility.
 - (3) (f) The laboratory or health care facility must identify personnel responsible for performing and supervising the waived testing.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, and 68-29-105.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (078-22)

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

There will be a hearing before the Department of Labor and Workforce Development to consider the promulgation of rules pursuant to T.C.A. §§ 4-3-1411, 50-3-201 and 50-3-203(e). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Hearing Room 16 of the Legislative Plaza located at Sixth and Union, Nashville, TN 37243 at 1:00 P.M. CDT on the 2nd day of October, 2000.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Labor and Workforce Development to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to October 2, 2000 to allow time for the Department of Labor and Workforce Development to determine how it may reasonably provide such aid or service. Initial contact may be made with Evelyn Gaines, ADA Coordinator, Department of Labor and Workforce Development, Davy Crockett Tower, 12th Floor, 500 James Robertson Parkway, Nashville, TN 37245-0001, (615) 741-5292, TDD (615) 532-2879.

For a copy of this notice of rulemaking hearing, contact: Mike Maenza, Manager of Standards and Procedures, Department of Labor and Workforce Development, Division of Occupational Safety and Health, Andrew Johnson Tower, 3rd Floor, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0800-1-10
SHARPS INJURY PREVENTION**

NEW RULES

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0800-1-10-.01 PURPOSE.

- (1) The purpose of these rules is to address the problem of needlesticks and other sharp injuries resulting in bloodborne pathogen exposure incidents. Changes in bloodborne disease trends have been reported, and engineering controls have been developed and made available, all of which impact health and safety of employees. The requirements in these rules for procedures and engineering and work practice controls provide a clear assignment to employers to address the use of sharps injury prevention technology.

Authority: T.C.A. §§4-3-1411, 50-3-201 and 50-3-203(e).

0800-1-10-.02 SCOPE AND APPLICATION.

- (1) This chapter applies to all occupational exposure to blood or other potentially infectious materials. This rule does not apply to the construction industry.

Authority: T.C.A. §§4-3-1411, 50-3-201 and 50-3-203(e)(1).

0800-1-10-.03 DEFINITIONS.

- (1) “Engineered Sharps Injury Protection” means:
 - (a) A physical attribute built into or added on a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, which effectively reduces the risk of an exposure incident;
 - (b) A physical attribute built into or added on any other type of needle device, or into a non-needle sharp, which effectively reduces the risk of an exposure incident;
 - (c) Sharps containers that meet the requirements in the Bloodborne Pathogens Standard, Title 29 Code of Federal Regulations, §1910.1030 as adopted by Rule 0800-1-1-.06; or
 - (d) Needleless systems.
- (2) “Exposure Incident” or “Incident of Exposure” means a specific eye, mouth, or other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee’s duties.
- (3) “Needle” or “Needle Device” includes, but is not limited to, solid and hollow-bore needles.
- (4) “Needleless System” means an intramuscular, intravenous or intra-arterial device that does not utilize needles.
- (5) “Occupational Exposure” means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee’s duties.
- (6) “Sharp” means any object used or encountered in a workplace that can be reasonably anticipated to penetrate the skin or any other part of the body, and to result in an exposure incident, including, but not limited to, needle devices, scalpels, lancets, broken glass, broken capillary tubes, exposed ends of dental wires and dental knives, drills and burs.
- (7) “Sharps Injury” means any injury caused by a sharp, including, but not limited to, cuts, abrasions or needlesticks.
- (8) “Sharps Injury Prevention Technology” means advances in equipment that remove the bloodborne pathogen transmission hazard from the workplace.

Authority: T.C.A. §§ 4-3-1411, 50-3-201 and 50-3-203(e)(1).

0800-1-10-.04 EXPOSURE CONTROL PLAN.

- (1) In addition to the requirements in the Bloodborne Pathogens Standard, Title 29 Code of Federal Regulations, §1910.1030, as adopted by Rule 0800-1-1-.06, the Exposure Control Plan shall also contain documentation of the type and brand of device in use when an exposure incident occurs. The documentation shall occur within six (6) days of the exposure incident.
- (2) Engineered sharps injury protection devices evaluated and currently used shall be documented in the Exposure Control Plan.

Authority: T.C.A. §§4-3-1411, 50-3-201 and 50-3-203(e)(3).

0800-1-10-.05 ENGINEERING AND WORK PRACTICE CONTROLS.

- (1) Available engineered sharps injury protection devices shall be evaluated and used when they are more effective in preventing exposure incidents.
- (2) The engineered sharps injury protection device is not required if:
 - (a) A licensed healthcare professional directly involved in a patient's care determines, in the exercise of clinical judgment, that use of the engineering control will jeopardize the patient's safety or the success of a medical, dental or nursing procedure involving the patient. The determination shall be documented.
 - (b) The employer can demonstrate by objective means that it is not more effective in preventing exposure incidents than the alternative used by the employer. The determination shall be documented.

Authority: T.C.A. §§4-3-1411, 50-3-201 and 50-3-203(e)(2).

0800-1-10-.06 AVAILABILITY OF LISTS.

- (1) The Department of Labor and Workforce Development and the Department of Health shall maintain a list of the types of existing needleless systems and sharps with engineered sharps injury protection. A copy of the list and available resources can be obtained upon request to assist employers in complying with the requirements of this rule. To obtain a copy of the list, employers may contact the Department of Labor and Workforce Development, Division of Occupational Safety and Health, Andrew Johnson Tower, 3rd Floor, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-2793, (800) 249-8510; or the Department of Health, Bureau of Health Services, Cordell Hull Building, 5th Floor, 425 Fifth Avenue North, Nashville, TN 37247, (615) 532-2431.

Authority: T.C.A. §§4-3-1411, 50-3-201 and 50-3-203(e)(4).

The notice of Rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-24)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendment to rules, new rules, and repeal of rules pursuant to T.C.A. §§4-5-202, 4-5-204, 53-11-301, 63-6-101, 63-6-214, and Public Chapter 694 of the Public Acts of 2000. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 11th day of October, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 5324397.

SUBSTANCE OF PROPOSED RULES**AMENDMENT**

Rule 0880-2-.14, Scope of Practice, is amended by adding new paragraph (7), so that as amended the new paragraph (7) shall read as follows:

- (7) Chelation
- (a) Without support of scientific literature contained within the National Library of Medicine of its effective use in the treatment of a disease or medical condition for which a licensee uses it, or in compliance with subparagraph (b) of this rule, the use of EDTA (ethylenediaminetetraacetic acid) in the clinical setting by delivering the medicine through parenteral or oral routes beyond the following FDA approved clinical indications and shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (3), and (4):
 - 1. Laboratory documented heavy metal poisoning/intoxication/toxicity;
 - (b) EDTA may be used in the clinical setting by delivering the medicine through parenteral or oral routes when a licensee experienced in clinical investigations has applied for, and received from, the Board written approval for a carefully controlled clinical investigation of its effectiveness in treating diseases or medical conditions other than those listed in subparagraph (a) of this rule under a protocol satisfactory to the Board to be conducted in an academic institution.
 - (c) It shall be a prima facie violation of T.C.A. § 63-6-214 (b) (8), and (9) and rule 0880-2-.13 (4) (g), (i), (j) and (l) for a licensee to advertise EDTA's administration in any manner to prevent or cure diseases or medical conditions other than those listed in subparagraph (a) of this rule without support of the scientific literature contained within the National Library of Medicine of its effective use in the treatment or cure of the disease or medical condition for which a licensee advertises it.

Authority: T.C.A. §§4-5-202, 4-5-204, 53-11-301, 63-6-101, and 63-6-214.

NEW RULES

CHAPTER 0880-4

GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF ATHLETIC TRAINERS

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0880-4.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Administrative Office - The office of the administrator assigned to the Board located on the First Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee 37247-1010.
- (2) Administrative Revocation - An Administrative action taken pursuant to Rule 0880-4-.09 when a license holder fails to timely renew his license and all other options available have been ignored. A license holder whose license has been administratively revoked has been provided an opportunity for a hearing and as such is officially unlicensed and cannot lawfully continue to practice as an athletic trainer in Tennessee. Licenses administratively revoked may be reinstated upon meeting the conditions stated in Rule 0880-4-.09.
- (3) Board - Tennessee Board of Medical Examiners.
- (4) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.
- (5) HRB - Health Related Boards.
- (6) License - The document issued by the Board to an applicant who has proven eligibility and has completed the licensure process.
- (7) NATABOC - National Athletic Trainers' Association Board of Certification, Inc.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-103 and Public Chapter 694 of the Public Acts of 2000.

0880-4-.02 SCOPE OF PRACTICE. The scope of practice of all athletic trainers is governed by T.C.A. § 63-24-101 (2).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-63-1-101, 63-24-103, and Public Chapter 694 of the Public Acts of 2000.

0880-4-.03 RESERVED.

0880-4-.04 RESERVED.

0880-4-.05 LICENSURE PROCESS. To become licensed as an athletic trainer in Tennessee a person must comply with the following procedures and requirements:

- (1) Grandfathering - Athletic trainers certified prior to May 9, 2000 must submit the documentation required by subparagraphs (2) (f), (g) and (h) of this rule to be eligible to continue to practice as an athletic trainer and receive a license upon renewal of their existing certification.
- (2) Licensure by examination:
 - (a) An application packet shall be requested from the Administrative Office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it, along with all documentation and fees required by the form and rules, to the Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
 - (c) An applicant shall submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
 - (d) It is the applicant's responsibility to request that a graduate transcript, from an athletic trainer curriculum of a college or university approved by the Board be submitted directly from the educational institution to the Administrative Office. The transcript must show that the degree has been conferred and carry the official seal of the institution.
 - (e) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding 12 months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signator's letterhead.
 - (f) An applicant shall have NATABOC submit directly to the Administrative Office satisfactory proof of NATABOC certification or proof of being eligible for that certification.
 - (g) An applicant shall disclose the circumstances surrounding any of the following:
 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 3. Loss or restriction of licensure/certification.

4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
 5. Failure of any licensure or certification examination.
- (h) If an applicant holds or has ever held a license/certificate to practice any profession in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each such licensing board which indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing board to the Administrative Office.
- (i) An applicant shall submit the fees required in Rule 0880-4-.06.
- (j) An applicant shall cause to be submitted documentation of successful completion of the examinations for licensure as governed by Rule 0880-4-.08. This verification must be submitted by the examining agency directly to the Administrative Office.
- (3) Licensure by Reciprocity. To become licensed in Tennessee as an athletic trainer based on licensure or certification in another state, an applicant must
- (a) Comply with all the requirements of paragraph (2) of this rule except subparagraphs (i) and (j); and
 - (b) Be licensed or certified in a state that will license or certify athletic trainers licensed and residing in Tennessee without examination; and
 - (c) Hold a current, active athletic trainer license/certificate that is in good standing in another state; and
 - (d) Pay the fee required by Rule 0880-4-.06 (2).
- (4) Application review and licensure decisions shall be governed by Rule 0880-4-.07.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-24-102, 63-24-103, 63-24-104, 63-24-105, and Public Chapter 694 of the Public Acts of 2000.*

0880-4-.06 FEES. All fees provided for in this rule are non-refundable.

- (1) Application-examination fee to be submitted at the time of application.
\$50.00
- (2) Initial licensure fee to be submitted at the time of application.
\$25.00
- (3) Biennial renewal fee to be submitted at the time of application.
\$80.00
- (4) Late renewal fee.
\$ 15.00

- (5) Licensure restoration fee.
\$50.00
- (6) Duplication of license fee.
\$5.00
- (7) Biennial state regulatory fee to be submitted at the time of application.
\$10.00
- (8) All fees must be submitted to the Administrative Office by cashier's check, personal check or money order made payable to the Board of Medical Examiners. Checks must be drawn on a United States Bank.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-106, and Public Chapter 694 of the Public Acts of 2000.

0880-4-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Board designee who has reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Board subsequently makes a good faith determination that the applicant has not met all the requirements for licensure, renewal or reinstatement and therefore denies, limits, conditions or restricts licensure, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the temporary authorization to practice and the subsequent denial, limitation conditioning or restricting of licensure.
- (3) If an application is incomplete when received by the Administrative Office, or the reviewing Board member or the Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the sixtieth (60th) day after receipt of the notification.
 - (a) Such notifications shall be sent certified mail, return receipt requested, from the Administrative Office.
 - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the administrator. If that occurs, the applicant shall be notified that the Board will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Board.
- (4) If a reviewing Board member or designee initially determines that a completed application should be denied, limited, conditioned or restricted, a temporary authorization shall not be issued. The applicant shall be informed of the initial decision and that a final determination on the application will be made by the Board at its next meeting. If the Board ratifies the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:

- (a) A notification of the denial, limitation, condition or restriction shall be sent by the Board's Administrative Office by certified mail, return receipt requested. Specific reasons for denial, limitation, condition or restriction will be stated, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial, limitation, condition or restriction.
 - (b) The notification shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§4-5-301, et seq.) to contest the denial, limitation, condition or restriction and the procedure necessary to accomplish that action.
- (5) The initial determination procedures of this rule will not apply if the Board reviews and makes final determination on any application during its meetings.
 - (6) If the Board finds it has erred in the issuance of a license, the Board will give written notice by certified mail of its intent to revoke or cancel the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke or cancel the license, the applicant shall have the right to proceed according to paragraph (4) of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-107, 63-24-108, and Public Chapter 694 of the Public Acts of 2000.

0880-4-.08 EXAMINATIONS. With the exception of applicants qualified pursuant to Rule 0880-4-.05 (3), all persons intending to apply for licensure as an athletic trainer in Tennessee must successfully complete the examinations pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Administrative Office as part of the application process contained in Rule 0880-4-.05.

- (1) Competency Examination
 - (a) The Board adopts the NATABOC certification examination and/or its successor examination as its licensure competency examination.
 - (b) The Board adopts the NATABOC's determination as to the passing score on its examination.
 - (c) Application for and fees necessary to take the NATABOC examination must be sent to the NATABOC and not the Board.
- (2) Jurisprudence Examination
 - (a) An applicant must take and pass the Board created and administered jurisprudence examination.
 - (b) A score of seventy-five percent (75%) or above will be considered passing for this examination.
 - (c) An examinee who fails this examination may subsequently retake it upon submitting payment of the application-examination fee, as provided in Rule 0880-4-.06 (1).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-105, and Public Chapter 694 of the Public Acts of 2000.

0880-4-.09 LICENSURE RENEWAL - All licensed athletic trainers must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:

- (1) The due date for license renewal is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" as contained on the expiration date on the renewal certificate.
- (2) A renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.
- (3) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
 - (a) A completed and signed renewal application form.
 - (b) The renewal and state regulatory fees as provided in Rule 0880-4-.06.
 - (c) Attest to compliance with the continuing education requirements of Rule 0880-4-.12.
- (4) Any renewal application received after the license expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-4-.06.
- (5) Any individual who fails to comply with the license renewal rules and/or notifications sent to them concerning failure to timely renew shall have their license processed for administrative revocation.
- (6) Any license holder who receives notice of administrative revocation may, within thirty (30) days of receipt of the notice pursuant to Rule 0880-4-.11, execute and file in the Administrative Office an affidavit of retirement which will effectively retire the license as of the thirtieth (30th) day after the renewal due date.
- (7) Reinstatement of Administratively Revoked License - Reinstatement of a license administratively revoked pursuant to this rule may be accomplished upon meeting the following conditions:
 - (a) Submission of a completed reinstatement application; and
 - (b) Payment of all past due renewal fees, including late renewal fee; and
 - (c) Submission of proof of having completed all required continuing education.
- (8) If derogatory information or communication is received during the renewal process, if requested by the Board or its duly authorized representative, appear before the Board, a duly constituted panel of the Board, a Board member, a screening panel when the individual is under investigation or the Board Designee for an interview and/or be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (9) Any licensee who fails to apply for reinstatement pursuant to this rule prior to the expiration of the second (2nd) year after which renewal was originally due may be required to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (10) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Board or its designee.

- (11) As an alternative to the paper and mail renewal, licensees may utilize any electronic means made available by the Division for the purpose of renewal of licensure

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-105 and Public Chapter 694 of the Public Acts of 2000.*

0880-4-.10 RESERVED.

0880-4-.11 RETIREMENT AND REACTIVATION OF LICENSE.

- (1) Licensees who wish to retain their licenses but not actively practice as an athletic trainer may avoid administrative revocation of licensure and/or compliance with the licensure renewal process by doing the following:
- (a) Obtain, complete, and submit to the Administrative Office, an affidavit of retirement form.
 - (b) Submit any documentation which may be required by the form to the Administrative Office.
- (2) Upon successful application for retirement of licensure with completion and receipt of all proper documentation to the Board's satisfaction, the Board shall register the license as retired. Any person who has a retired license may not practice as an athletic trainer in Tennessee.
- (3) Reactivation - Any licensee whose license has been retired may re-enter active practice by doing the following:
- (a) Submit a written request for a Reactivation Application to the Board Administrative Office; and
 - (b) Complete and submit the Reactivation Application along with payment of the licensure renewal fee as provided in Rule 0880-4-.06 to the Administrative Office. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the licensure restoration fee and past due renewal fees as provided in Rule 0880-4-.06; and
 - (c) Submit any documentation which may be required by the form to the Board Administrative Office; and
 - (d) If requested, after review by the Board or a designated Board member, appear before either the Board, or a duly constituted panel of the Board, or another Board member, or the Board Designee for an interview regarding continued competence
- (4) In the event of licensure retirement or inactivity in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process the applicant should be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (5) An applicant who is currently under investigation may be required to appear before a screening panel of the Board.
- (6) If licensure retirement was in excess of five (5) years, the licensee may be required to successfully complete whatever educational and/or testing requirements the Board feels necessary to establish current levels of competency.
- (7) License reactivation applications shall be treated as licensure applications and review decisions shall be governed by Rule 0880-4-.07.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-24-102, 63-24-105, and Public Chapter 694 of the Public Acts of 2000.*

0880-4-.12 CONTINUING EDUCATION. All persons licensed as an athletic trainer must comply with the following continuing education rules as a prerequisite to licensure renewal.

- (1) Continuing Education - Hours Required
 - (a) All athletic trainers must annually, from January 1 through December 31, complete twenty-five (25) hours of continuing education in courses approved by the Board.
 - (b) The Board approves a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.
 - (c) The Board may waive or otherwise modify the requirements of this rule in cases where there is retirement or an illness, disability or other undue hardship which prevents a licensee from obtaining the requisite number of continuing education hours. Requests for waivers or modification must be sent in writing to the Board prior to the expiration of the renewal period in which the continuing education is due.
- (2) Continuing Education - Proof of Compliance
 - (a) The due date for completion of the required continuing education is the expiration date of the athletic trainer's license renewal.
 - (b) All athletic trainers must, on the license renewal form, enter a signature which indicates completion of the required continuing education hours and that such hours were obtained during the renewal period.
 - (c) All athletic trainers must retain independent documentation of completion of all continuing education hours. This documentation must be retained for a period of four (4) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process. Certificates verifying the licensed individual's completion of the continuing education program(s) consist of any one or more of the following:
 1. Continuing education program's sponsor, date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number.
 2. An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number.
 - (d) If a person submits documentation for continuing education that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the education and how it applies to the practice as an athletic trainer.
- (3) Acceptable continuing education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education program must be approved in content, structure and format by NATABOC, the American Medical Association (AMA), the Tennessee Medical Association or other any AMA recognized medical specialty certification organization.
- (4) Violations

- (a) Any athletic trainer who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-4-.15.
- (b) Any athletic trainer who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-4-.15 and may not be allowed to renew licensure.
- (c) Education hours obtained as a result of compliance with the terms of Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, and Public Chapter 694 of the Public Acts of 2000.

0880-4-.13 Professional Ethics. All athletic trainers shall comply with the following code of ethics violation of which may subject an athletic trainer to disciplinary action pursuant to Rule 0880-3-.15.

(1) General

- (a) An athletic trainer has the responsibility of maintaining and improving services by constantly examining, using the increasing knowledge upon which the athletic trainer's practice is based.
- (b) In order to maintain and enhance professional competence, an athletic trainer shall make use of appropriate educational opportunities and, when indicated, will seek consultation from colleagues and other suitable professionals.
- (c) An athletic trainer shall respect the integrity of all individuals and groups with whom he or she is working and will be protective of their physical and emotional welfare.
- (d) An athletic trainer shall not discriminate on the basis of sex, race, creed, national origin, or age while performing assigned duties.
- (e) An athletic trainer shall not condone, engage in, or defend any conduct which violates any state statute or regulation.

(2) Drugs

- (a) An athletic trainer shall not engage in or condone usage by an athlete of any prescription drug not specifically ordered by and given under the supervision of a licensed physician, which has been dispensed by a licensed pharmacist or licensed physician.
- (b) An athletic trainer shall not engage in or condone or allow the administration to an athlete of any nonprescription drug unless he or she operates under a protocol formulated by his overseeing physician.

(3) Professional Representation

- (a) An athletic trainer shall not misrepresent his or her professional qualifications.
- (b) An athletic trainer shall practice only in those areas in which he or she is competent by reason of training or experience which can be substantiated by records or other evidence found acceptable by the

Board in the exercise of the Board's considered discretion.

- (4) Testimonials and Endorsements
 - (a) Endorsements of commercial products must be in keeping with the highest principles and standards of the athletic training profession.
 - (b) The Board of Medical Examiners or the names of any of its members may not be used in any testimonials and/or endorsements by athletic trainers.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102 and Public Chapter 694 of the Public Acts of 2000.

0880-4-.14 RESERVED.

0880-4-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

- (1) Grounds and Authority For Disciplinary Actions - The Board shall have the power to deny, limit, restrict or condition an application for a license to any applicant who applies for the same. The Board shall have the authority to suspend or revoke, reprimand or otherwise discipline any person holding a license to practice as an athletic trainer. The grounds upon which the Board shall exercise such power includes, but are not limited to, the following:
 - (a) Unprofessional, dishonorable, or unethical conduct;
 - (b) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of T.C.A. §§63-24-101, et seq., or any lawful order of the Board issued pursuant thereto, or any criminal statute of the state of Tennessee;
 - (c) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as an athletic trainer;
 - (d) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of practice as an athletic trainer;
 - (e) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice as a an athletic trainer;
 - (f) Willfully betraying a professional secret;
 - (g) The advertising of an athletic trainer business in which untrue or misleading statements are made, or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment, or conditions;
 - (h) Willful violation of the rules and regulations promulgated by the Board to regulate advertising by practitioners who are under the jurisdiction of such board;
 - (i) Conviction of a felony, conviction of any offense under state or federal drug laws;

- (j) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;
 - (k) Dispensing, prescribing, or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease;
 - (l) Dispensing, prescribing, or otherwise distributing any controlled substance to any person in violation of any law of the state or of the United States of America or any rule of the Board;
 - (m) Offering, undertaking, or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, device or instrumentality;
 - (n) Giving or receiving, or aiding or abetting the giving or receiving of rebates, either directly or indirectly for referrals of business or patients;
 - (o) Engaging in the practice of an athletic trainer under a false or assumed name, or the impersonation of another practitioner, or a like, similar or different name;
 - (p) Engaging in the practice of an athletic trainer when mentally or physically unable to safely do so;
 - (q) Violation of the continuing education provisions of Rule 0880-4-.12;
 - (r) Violation of the scope of practice statutes T.C.A. § 63-24-101;
 - (s) Violation of the ethic code established in Rule 0880-4-.13;
 - (t) Disciplinary action against a person licensed, certified, registered, or permitted to practice as an athletic trainer by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state.
- (2) Upon a finding by the Board that an athletic trainer has violated any provision of the T.C.A. §§63-24-101, et seq., or the rules promulgated pursuant thereto, the Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense;
- (a) Advisory Censure - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Formal Censure or Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a physician assistant on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) License Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the license previously issued.

(e) License Revocation

1. Administrative Revocation - An administrative action taken pursuant to rule 0880-4-.09 when a license holder fails to timely renew licensure and all other available options have been ignored. Licenses administratively revoked may be reinstated upon meeting the conditions stated in Rule 08804-.09.
 2. Revocation For Cause - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the licensure previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time which it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
- (f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined license holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked license.
- (g) Civil Penalty - A monetary disciplinary action assessed by the Board pursuant to Rule 0880-2-.12.
- (h) Assessment of Costs - Shall be governed by Rule 0880-2-.12.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-24-101, 63-24-102, 63-24-107 and Public Chapter 694 of the Public Acts of 2000.

0880-4-.16 Replacement License. A license holder whose “artistically designed” license has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 0880-4-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-105, 63-24-106 and Public Chapter 694 of the Public Acts of 2000.

0880-4-.17 CHANGE OF NAME AND/OR ADDRESS.

- (1) Change of Name - Any athletic trainer shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A name change notification must also include a copy of the official document involved and reference the individual’s profession, board, social security, and license numbers.
- (2) Change of Address - Each person holding a license who has had a change of address shall file in writing with the board his/her current address providing both the old and new addresses. Such requests must be received in the Administrative Office no later than thirty (30) days after such change is effective and must reference the individual’s name, profession, social security number, and license number.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-108, 63-6-101, 63-24-102, and Public Chapter 694 of the Public Acts of 2000.

0880-4-.18 RESERVED.

0880-4-.19 RESERVED.

0880-4-.20 ADVERTISING. FRAUDULENT, MISLEADING, OR DECEPTIVE ADVERTISING IS PROHIBITED.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, and Public Chapter 694 of the Public Acts of 2000.

REPEALS

0880-4-.01 CODE OF ETHICS is repealed.

0880-4-.02 REGULATION OF PRACTICE is repealed.

0880-4-.03 CERTIFICATION REQUIREMENTS is repealed.

0880-4-.04 REFUSAL TO CERTIFY is repealed.

0880-4-.05 FEES is repealed.

0880-4-.06 CIVIL PENALTIES is repealed.

Authority: T.C.A. §§4-5-202, 4-5-204, and Public Chapter 694 of the Public Acts of 2000.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of July, 2000. (07-11)

BOARD OF OPTOMETRY - 1045

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 27th day of September, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Rule 1045-2-.10, Disciplinary Actions, Civil Penalties, Declaratory Orders, Assessment of Costs and Subpoenas, is amended by deleting item (5) (c) 1. (iii) (I) in its entirety and substituting instead the following language, so that as amended, the new item (5) (c) 1. (iii) (I) shall read:

- (5) (c) 1. (iii) (I) In as timely a manner as possible arrange for either an elected officer of the board, or any duly appointed or elected chairperson of any panel of the board, to preside and determine if issuing the subpoena should be recommended to the full Board; and

Rule 1045-2-.10, Disciplinary Actions, Civil Penalties, Declaratory Orders, Assessment of Costs and Subpoenas, is amended by deleting items (5) (c) 1. (v) (III) and (5) (c) 1. (v) (V) in their entirety and substituting instead the following language, and is further amended by deleting item (5) (c) 1. (v) (VI) in its entirety and renumbering the remaining item accordingly, so that as amended, the new items (5) (c) 1. (v) (III) and (5) (c) 1. (v) (V) shall read:

- (5) (c) 1. (v) (III) Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings and present to the full board only that evidence necessary for an informed decision; and
- (5) (c) 1. (v) (V) Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full board; and

Rule 1045-2-.10, Disciplinary Actions, Civil Penalties, Declaratory Orders, Assessment of Costs and Subpoenas, is amended by adding the following language as new subpart (5) (c) 1. (vi):

- (5) (c) 1. (vi) The Board shall do the following:
- I. By a vote of two thirds (2/3) of the board members issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and
 - II. Sign the subpoena as ordered to be issued, quashed or modified.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-120.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of July, 2000. (07-07)

BOARD OF OSTEOPATHIC EXAMINATION - 1050

There will be a hearing before the Tennessee Board of Osteopathic Examination to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-9-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 11th day of October, 2000.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1050-2-.13, Scope of Practice, is amended by adding the following language as new paragraph (6):

(6) Chelation

- (a) Without support of scientific literature contained within the National Library of Medicine of its effective use in the treatment of a disease or medical condition for which a licensee uses it, or in compliance with subparagraph (b) of this rule, the use of EDTA (ethylenediaminetetraacetic acid) in the clinical setting by delivering the medicine through parenteral or oral routes beyond the following FDA approved clinical indication and shall be a prima facie violation of T.C.A. § 63-9-111 (b) (1), (3), and (4):

Laboratory documented heavy metal poisoning/intoxication/toxicity.

- (b) EDTA may be used in the clinical setting by delivering the medicine through parenteral or oral routes when a licensee experienced in clinical investigations has applied for, and received from, the Board written approval for a carefully controlled clinical investigation of its effectiveness in treating diseases or medical conditions other than those listed in subparagraph (a) of this rule under a protocol satisfactory to the Board.
- (c) It shall be a prima facie violation of T.C.A. § 63-9-111 (b) (19) and rule 1050-2-.11 (4) (g), (i), (j) and (l) for a licensee to advertise EDTA's administration in any manner to prevent or cure diseases or medical conditions other than those listed in subparagraph (a) of this rule without support of the scientific literature contained within the National Library of Medicine of its effective use in the treatment or cure of the disease or medical condition for which a licensee advertises it.

Authority: T.C.A. §§4-5-202, 4-5-204, 53-11-301, 63-9-101, and 63-9-111.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2000. (07-25)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning July 3, 2000 and ending July 31, 2000.


RILEY C. DARNELL
Secretary of State

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