

# TAR

TENNESSEE ADMINISTRATIVE REGISTER



OCTOBER 2000  
Volume 26, Number 10

# TAAAR



**RILEY C. DARNELL**  
Secretary of State

Division of Publications  
8th Floor, Snodgrass Tower  
312 8th Avenue North  
Nashville TN 37243 - 0310

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Department of State, Authorization No. 305084, 475 copies, October 2000. This public document was promulgated at a cost of \$ 2.30 per copy.

## 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.

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**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**

### **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 November, 2000 is 9.89 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 5.89 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 September 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	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-07	Sept 15, 2000	1660 Wildlife Resources Commission	Rulemaking Hearing Rules	Repeal	Chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels 1660-2-7-.01 Reelfoot Lake	Sheryl Holtam, Attorney Wildlife Resources Agency P. O. Box 40747 Nashville, TN 37204 (615) 781-6606	Nov 29, 2000
09-08	Sept 15, 2000	1660 Wildlife Resources Commission	Rulemaking Hearing Rules	Amendment	Chapter 1660-1-27 Rules and Regulations for State Operated Hunter Education Centers and Firing Ranges 1660-1-27-.04 Stones River Hunter Education Center 1660-1-27-.05 Bartlett Hunter Education Center	Sheryl Holtam, Attorney Wildlife Resources Agency P. O. Box 40747 Nashville, TN 37204 (615) 781-6606	Nov 29, 2000
09-09	Sept 14, 2000	0400 Department of Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	Chapter 1200-1-11 Hazardous Waste Management	Gerald Ingram Hazardous Waste Program Solid Waste Management 5 <sup>th</sup> Fl L&C Twr 532-0850	Nov 28, 2000
09-13	Sept 20, 2000	1500 Human Rights Commission	Emergency Rules	Amendments	Chapter 1500-1 Commissioner's Hearings 1500-1-.05 When Hearing Ordered	Scott J. Mayer 530 Church St., Suite 400 Nashville, TN 37243-0745 (615) 741-5825	September 7, 2000 through February 18, 2001
09-14	Sept 20, 2000	1500 Human Rights Commission	Proposed Rules	Amendments	Chapter 1500-1 Commissioner's Hearings 1500-1-.05 When Hearing Ordered	Scott J. Mayer 530 Church St., Suite 400 Nashville, TN 37243-0745 (615) 741-5825	January 29, 2001
09-15	Sept 20, 2000	1500 Human Rights Commission	Proposed Rules	Amendments	1500-1-.02 Practice and Procedure	Scott J. Mayer 530 Church St., Suite 400 Nashville, TN 37243-0745 (615) 741-5825	January 29, 2001
09-16	Sept 20, 2000	1500 Human Rights Commission	Emergency Rules	Amendments	1500-1-.02 Practice and Procedure	Scott J. Mayer 530 Church St., Suite 400 Nashville, TN 37243-0745 (615) 741-5825	September 7, 2000 through February 18, 2001
09-17	Sept 20, 2000	0400 Dept of Environment and Conservation Division of Air Pollution	Rulemaking Hearing Rules	New Rule	Chapter 1200-3-27 Nitrogen Oxides 1200-3-27-.06 NOx Budget Trading Program for State Implementation Plans	Mr. Barry R. Stephens Air Pollution Control 9th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615)532-0525	Dec 4, 2000

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-19	Sept 20, 2000	1660 Wildlife Resources Commission	Emergency Rules	Amendments	1660-1-2-.02 Migratory Bird Hunting Permit Applications and Drawings 1660-1-8-.05	Sheryl Holtam, Attorney Wildlife Resources Agency P. O. Box 40747 Nashville, TN 37204 (615) 781-6606	Sept 6, 2000 through Feb 19, 2000
09-20	Sept 26, 2000	0940 Mental Health	Public Necessity Rules	New Rules	Chapter 0940-1-4 Reporting To Statewide Abuse Registry Of Suspected Client Abuse, Neglect, Mistreatment 0940-4-.01 Purpose 0940-4-.02 Definitions 0940-4-.03 Abuse Investigation Procedures 0940-4-.04 Procedure for Placement on the Abuse Registry of Persons Who have Abused, neglected, mistreated, or misappropriated the property of individuals receiving services through the Division	Cynthia Tyler OLC 26 <sup>th</sup> fl Snodgrass Twr 312 8 <sup>th</sup> Ave N Nashville TN 37243 615-532-6518	Sept 21, 2000 through March 5, 2000
09-24	Sept 26, 2000	1200 Department of Health Bureau of Health Services Administration Division of General Environmental Health	Rulemaking Hearing Rules	New Rules	Chapter 1200-23-3 Tattoo Artist and Tattoo Establishment 1200-23-3-.01 Definitions 1200-23-3-.02 Prohibited Acts 1200-23-3-.03 Minimum Standards for Tattoo Establishments 1200-23-3-.04 Tattoo Operation 1200-23-3-.05 Establishment Permitting and Inspection System 1200-23-3-.06 Tattoo Artist Licensing 1200-23-3-.07 Licensing and Permitting Fees 1200-23-3-.08 Loss of Permit Document 1200-23-3-.09 General Provisions	Jerrold Daniels Cordell Hull Bldg 3 <sup>rd</sup> Fl 425 5 <sup>th</sup> Ave N Nashville Tn 37247-0101 615-741-3111	Dec 10, 2000
09-26	Sept 26, 2000	0400 Department of Environment And Conservation Division of Air Pollution Control	Rulemaking Hearing Rules	New Rule	Chapter 1200-3-27 Nitrogen Oxides 1200-3-27-.04 Standards For Cement Kilns	Mr. John D. Patton 9th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615)532-0605	Dec 10, 2000
09-27	Sept 26, 2000	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	Chapter 1200-1-13 Hazardous Substance Remedial Action 1200-1-13-.13 List of Inactive Hazardous Substance Sites 55-508	Robert L. Powell Division of Superfund 4th Floor Annex, L & C Building Nashville, TN 37243-1538 (615)532-0916	Dec 11, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-28	Sept 26, 2000	<b>0400 Environment and Conservation</b> Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 60-548	Robert L. Powell Legal Services Director 4 <sup>th</sup> Floor Annex, L & C Building Nashville, TN 37243-1538 (615)532-0916	Dec 11, 2000
09-29	Sept 29, 2000	<b>0400 Department of Environment and Conservation</b> Division of Water Pollution Control The Water Quality Control Board	Public Necessity Rules	New Rules	<i>Chapter 1200-4-13 Inter-Basin Water Transfers</i> 1200-4-13-.01 Purpose, Scope, and Applicability 1200-4-13-.02 Definitions 1200-4-13-.03 Individual Permit Applications 1200-4-13-.04 Public Involvement 1200-4-13-.05 Criteria for Issuance of Individual Permits 1200-4-13-.06 Permit Terms and Conditions 1200-4-13-.07 General Permits 1200-4-13-.08 Enforcement and penalties 1200-4-13-.09 Hearings 1200-4-13-.10 Annual Certification 1200-4-13-.11 Protected Areas	Alan M. Leiserson Legal Services Director 312 8 <sup>th</sup> Ave. N., 25 <sup>th</sup> Floor Nashville, TN 37243-1548	Sept 29, 2000 through March 13, 2000
09-30	Sept 28, 2000	<b>1660 Wildlife Resources Agency</b>	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-2-7 Rules and Regulations Governing Operation of Vessels</i> 1660-2-7-.21 Boone Lake	Sheryl Holtam, Staff Attorney Wildlife Resources Agency P. O. Box 40747 Nashville, Tennessee 37204 (615) 781-6606	Dec 12, 2000
09-31	Sept 29, 2000	<b>1730 Board of Veterinary Medical Examiners</b>	Rulemaking Hearing Rules	Amendments	<i>Chapter 1730-1 General Rules Governing Veterinarians</i> 1730-1-.04 Qualifications for Licensure 1730-1-.05 Procedures for Licensure 1730-1-.06 Fees 1730-1-.07 Application Review, Approval, Denial, Interviews 1730-1-.08 Examinations <i>Chapter 1730-3 General Rules Governing Veterinary Medical Technicians</i> 1730-3-.04 Qualifications for Licensure 1730-3-.07 Application Review, Approval, Denial, Interviews 1730-3-.08 Examinations	Rachel Nelley, Office of General Counsel, 26 <sup>th</sup> Floor, William R. Snodgrass Tennessee Tower, 312 8 <sup>th</sup> Avenue North, Nashville, TN 37247-0120 615-741- 1611.	Dec 13, 2000

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-32	Sept 29, 2000	<b>1240 Department of Human Services</b> Administrative Procedures Division	Rulemaking Hearing Rules	Repeals	Chapter 1240-5-11 <i>Procedures Affecting Licenses of Child Welfare Agencies</i> Chapter 1240-4-5 <i>Procedures Affecting Licenses of Child Care Agencies</i> 1240-4-5-.01 Purpose and Scope 1240-4-5-.02 Definitions 1240-4-5-.03 Licensing Process 1240-4-5-.04 Violations of Licensing Regulations 1240-4-5-.05 Restricted Licenses for Child Care Agencies 1240-4-5-.06 Reapplication Periods	William B. Russell, General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731	Dec 13, 2000
09-33	Sept 29, 2000	<b>1240 Department of Human Services</b> Community and Field Services Division	Rulemaking Hearing Rules	Amendments	Chapter 1240-4-6 <i>Licensure Rules for Child Care Centers Serving School-Age Children</i> 1240-4-6-.02 Definitions 1240-4-6-.06 Organization and Administration 1240-4-6-.07 Staff	William B. Russell, General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731	Dec 13, 2000
09-43	Sept 29, 2000	<b>1240 Department of Human Services</b> Family Assistance Division	Rulemaking Hearing Rules	Amendments	Chapter 1240-1-50 <i>Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson, Assistant General Counsel Tennessee Tower, 26th Floor 312 8 <sup>th</sup> Avenue, North Nashville, Tennessee 37243 (615) 741-9534	Dec 13, 2000
09-44	Sept 29, 2000	<b>1240 Department of Human Services</b> Administrative Procedures Division	Rulemaking Hearing Rules	New Rules	Chapter 1240-5-13 <i>Child Care Agency Board of Review</i> 1240-5-13-.01 Purpose and Scope 1240-5-13-.02 Definitions 1240-5-13-.03 Composition and Duties of Board 1240-5-13-.04 Recording Secretary 1240-5-13-.05 Hearing Procedures 1240-5-13-.06 Probation and Restricted Licenses 1240-5-13-.07 Waiver of Reapplication Waiting Periods	Phyllis Simpson, Assistant General Counsel Tennessee Tower, 26th Floor 312 8 <sup>th</sup> Avenue, North Nashville, Tennessee 37243 (615) 741-9534	Dec 13, 2000

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-45	Sept 29, 2000	<b>1240 Department of Human Services</b> Community and Field Services Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children</i> 1240-4-3-.02 Definitions 1240-4-3-.03 Basis for Approval for Licensing 1240-4-3-.06 Organization and Administration 1240-4-3-.07 Staff	William B. Russell, General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731a	Dec 13, 2000
09-46	Sept 29, 2000	<b>1240 Department of Human Services</b> Community and Field Services Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 1240-4-1 Standards for Group Day Care Homes</i> 1240-4-1-.01 Introduction 1240-4-1-.02 Ownership and Administration 1240-4-1-.03 Staff	William B. Russell, General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731a	Dec 13, 2000
09-47	Sept 29, 2000	<b>1240 Department of Human Services</b> Community and Field Services Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 1240-4-4 Standards for Family Day Care Homes</i> 1240-4-4-.01 Introduction 1240-4-4-.02 Ownership and Administration 1240-4-4-.03 Staff	William B. Russell, General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731a	Dec 13, 2000

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

Applications will be heard at the November 15, 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 September 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

HEALTHSOUTH Rehabilitation Hospital of North Memphis  
Austin Peay Highway adjacent to Methodist North Hospital  
Memphis (Shelby Co.), TN  
Jennifer Bullock – (205)—969-6179  
CN0006-044

The establishment of a comprehensive inpatient rehabilitation service consisting of a forty (40) bed rehabilitation facility to be located at Austin Peay Highway adjacent to Methodist North Hospital, in Memphis (Shelby County), Tennessee. The facility will encompass approximately 39,000 square feet and will be capable of housing forty (40) requested beds along with sufficient therapeutic, recreational, and administrative spaces. It will be of single story construction with three (3) private bedrooms, one (1) isolation bedroom, and eighteen (18) semi-private bedrooms.  
\$ 9,982,166

+Morristown-Hamblen Hospital  
908 West Fourth North Street  
Morristown (Hamblen Co.), TN 37814  
Dedra Anderson – (423)—586-4231  
CN0008-068

The establishment of a neonatal intensive care unit. The proposed neonatal intensive care unit is to be located adjacent to the existing nursery on the second floor of the main campus of Morrystown-Hamblen Hospital, at 908 West Fourth North Street in Morrystown (Hamblen County, Tennessee). The new facility consists of approximately 676 square feet of renovated space and will include six (6) neonatal beds. Morrystown-Hamblen Hospital proposes to convert six (6) of its existing twenty-two (22) obstetrical beds to neonatal beds. The total number of licensed beds will not change.  
\$ 260,200

NAME AND ADDRESS	DESCRIPTION
<p>Homecare Services of West Tennessee, Inc. 386B Carriage House Drive Jackson (Madison Co.), TN 38305 Marsha Faulder – (901)—427-2806 CN0008-069</p>	<p>The establishment of a home health agency and the initiation of home health services. The facility will be located at 386B Carriage House Drive in Jackson (Madison County), Tennessee. The applicant's proposed service area consists of the following Tennessee counties: Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, and Weakley.</p> <p>\$ 19,400</p>
<p>HHC, Inc./Housecall Supportive Services, Inc. D/b/a Housecall Home Healthcare 1420 Dutch Valley Road Knoxville (Knox Co.), TN 37918 Linda Coker – (678)—380-5994 CN0008-071</p>	<p>The initiation of a home health care agency to provide services to the following Tennessee counties: Bledsoe, Cumberland, Fentress, Loudon, Monroe, Morgan, Overton, Pickett, Roane, and Scott. These counties are being currently served by two (2) other Housecall agencies; HHC, Inc. d/b/a Housecall Home Healthcare and Housecall Supportive Service, Inc., d/b/a Housecall Home Healthcare. The facility will be located at 1420 Dutch Valley road in Knoxville, Tennessee. The applicant will, if the Commission approves the Certificate of Need, seek approval by the Department of Health to make existing branches, associated with the aforementioned agencies, branches of the applicant's home health agency. The two (2) existing Housecall Home Healthcare agencies, also located at 1420 Dutch Valley Road in Knoxville, Tennessee, will relinquish their licenses and consolidate staff and clients with HHC, Inc., d/b/a Housecall Home Healthcare.</p> <p>\$ 57,133.54</p>
<p>Morristown Regional Eye Surgery Center 735 McFarland Street Morristown (Hamblen Co.), TN 37814 Keith Williams – (423)—581-0360 CN0008-072</p>	<p>The establishment of an ambulatory surgical treatment center to ophthalmology. The center will be located at 735 McFarland Street in Morristown, Tennessee 37814 and will consist of one surgical suite.</p> <p>\$ 594,860</p>
<p>Cataract and Laser Center, L.L.C. 400 Genesis Road Crossville (Cumberland Co.), TN 38555 E. Graham Baker – (615)—383-3332 CN0008-073</p>	<p>The establishment of an ambulatory surgical treatment center limited to procedures on the head and neck and the initiation of ambulatory surgical treatment services. The proposed 4,805 square foot facility will contain one (1) operating room and will be adjacent to Dr. Larry Patterson's medical office at 400 Genesis Road in Crossville, Tennessee.</p> <p>\$ 855,000</p>

NAME AND ADDRESS	DESCRIPTION
<p>Sycamore Shoals Hospital  1501 W. Elk Avenue  Elizabethton (Carter Co.), TN 37643  Kelly Crepps – (423)—431-6052  CN0008-075</p>	<p>The acquisition of a GE 1.5 Tesla Signa Magnetic Resonance Imaging System in order to convert from mobile to fixed and MRI services.  \$ 3,251,000</p>
<p>Middle Tennessee Medical Center  400 North Highland Avenue  Murfreesboro (Rutherford Co.), TN 37130  Rebecca Climer – (615)—849-4109  CN0008-078</p>	<p>Renovate and expand the emergency room of Middle Tennessee Medical Center. This will be accomplished by renovating the already existing 9,000 square foot emergency department and adding an additional 16,000 square feet of space by relocating Physical Therapy, Respiratory Therapy, a medical billing office, and several storage and support areas. Once completed, the new emergency room will consist of approximately 25,000 square feet.  \$ 6,000,000</p>
<p>Southern Tennessee Medical Center  185 Hospital Road  Winchester (Franklin Co.), TN 37398  John Wellborn – (615)—269-0070  CN0008-079</p>	<p>The initiation of mobile extracorporeal lithotripsy services one day per week at 185 Hospital Road on the campus of Southern Tennessee Medical Center in Winchester (Franklin County), Tennessee.  \$ 510,500</p>
<p>Southern Hills Medical Center  391 Wallace Road  Nashville (Davidson Co.), TN 37211  John Wellborn – (615)—269-0070  CN0008-080</p>	<p>The establishment of an outpatient diagnostic center (ODC), the acquisition of an GE Signa 1.0T Wide Open System MRI unit, and the relocation of the Women’s Imaging Center from the Medical Office Building A on the hospital campus, in leased space adjacent to the hospital campus at 344 Wallace Road, Nashville (Davidson County), Tennessee. The facility consists of 5,808 square feet of space on the first and second floors of the building.  \$ 3,885,639</p>
<p>Hillside Hospital  1265 East College Street  Pulaski (Giles Co.), TN 38478  John Wellborn – (615)—269-0070  CN0008-081</p>	<p>The initiation of swing bed services. Five (5) semi-private rooms containing 10 beds will be re-designated from medical-surgical beds to swing beds. The hospital is located at 1265 East College Street in Pulaski (Giles County), Tennessee.  \$ 3,885,639</p>



## NAME AND ADDRESS

+Hospital of Morristown,  
d/b/a Lakeway Regional Hospital  
726 McFarland Street  
Morristown (Hamblen Co.), TN 37814  
Micheal Terry – (423) 586-2302  
CN-0008-082

## DESCRIPTION

The establishment of a neonatal intensive care unit. The proposed neonatal intensive care unit is to be located adjacent to the existing nursery at 726 McFarland Street in Morristown (Hamblen County), Tennessee. The new facility consists of approximately 475 square feet of renovated space and will include four (4) neonatal beds. Lakeway Regional Hospital proposes to convert four (4) of its existing one hundred nine (109), medical/surgical beds to neonatal beds. The total number of licensed beds will not change.

\$ 250,000

## **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)
- 0080 - Department of Agriculture - Division of Forestry - 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, chapter 0080-7-1 General, 8 T.A.R. (August 2000) - filed July 25, 2000; effective through January 6, 2000. (07-04)
- 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 HUMAN RIGHTS COMMISSION - 1500**

### **STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES**

Pursuant to T.C.A. 4-5-208, the Tennessee Human Rights Commission promulgates this rule without prior notice as an emergency rule to provide for the hiring of private contractors to investigate complaints of discrimination. The Commission takes this action because of an immediate danger to the public welfare and to protect the legal rights of Tennesseans. The Commission has determined that, with its current backlog of cases, it could best serve Tennesseans with complaints before the Commission by hiring private contractors to investigate complaints. This emergency rule would ameliorate the current backlog of complaints awaiting investigation by the Commission. If the regular rulemaking procedure is followed, it would effectively delay the timely investigation of these complaints. With the assistance of the private contractors acting as designated investigators, and with sufficient time to use both training and the state's progressive discipline policies with its current and any incoming staff, the Commission can significantly reduce or eliminate its investigative backlog. Current law allows the Commission to designate persons in addition to staff members to investigate cases. T.C.A. § 4-21-302(b). This rule amendment would allow for the implementation of that code section.

For a copy of this emergency rule contact: Scott J. Mayer, Esq., Tennessee Human Rights Commission, 530 Church Street, Nashville, Tennessee 37243-0745, (615) 741-5825.

Julius Sloss,  
Executive Director  
Tennessee Human Rights Commission

**EMERGENCY RULES  
OF THE  
TENNESSEE HUMAN RIGHTS COMMISSION**

**CHAPTER 1500-1  
RULES FOR ACTING UPON COMPLAINTS OF DISCRIMINATION**

**AMENDMENTS**

Rule 1500-1-.02 Practice and Procedure is amended in subsection (4)(e) "Definitions: Investigator" by deleting the rule and substituting the following language so that as amended, the rule shall read:

- (e) "Investigator" shall mean a Commissioner appointed by the Chairman, a member of the Commission staff designated by the Executive Director, or an approved contractor designated by the Executive Director, empowered to investigate the allegations of the complaint and to determine whether there is sufficient evidence to substantiate those allegations.

**Authority:** T.C.A. § 4-21-202(14), § 4-21-302(b).

Rule 1500-1-.04 Investigation and Conciliation is amended in subsection (1) "Investigation" by deleting the rule and substituting the following language so that as amended the rule shall read:

- (1) Investigation. After the filing of a complaint, the Executive Director or a subordinate supervisor designated by him or her shall designate an investigator from the Commission staff or from a group of approved contract investigators to investigate the complaint. The Chairman may at his or her discretion designate a Commissioner to direct the investigation as chief investigator. The designated investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.

**Authority:** T.C.A. § 4-21-202(3), § 4-21-302(b).

The emergency rules set out herein were properly filed in the Department of State on the 7th day of September, 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 18th day of February, 2001. (09-16)

**TENNESSEE HUMAN RIGHTS COMMISSION - 1500**

**STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES**

Pursuant to T.C.A. §4-5-208, the Tennessee Human Rights Commission promulgates this rule without prior notice as an emergency rule to provide for the appointment of a hearing examiner to conduct commissioner's hearings. The Commission takes this action because of an immediate danger to the public welfare and to protect the legal rights of Tennesseans. The Commission has determined that, with its current backlog of "cause" discrimination cases, it could best serve Tennesseans with such complaints before the Commission by appointing its own hearing examiner. This emergency rule would ameliorate the current backlog of cause cases awaiting hearings in front of the Commission in an efficient and expedient manner. If the regular rulemaking procedure is followed, it would effectively delay the timely resolution of these cases.

Currently, the rules of the Commission require hearings be held before three (3) hearing examiners to be appointed by the Commissioners (1500-1-.05(15)). This emergency rule would allow for the appointment of a single hearing examiner, and would eliminate an apparent conflict between the Commission's current rules and Tenn. Code Ann. §4-21-304(a). That code section permits the Commission to conduct a "...hearing before a hearing examiner or hearing examiners, or another individual pursuant to its rules...". This emergency rule amendment would allow for the implementation of that code section.

For a copy of this emergency rule contact: Scott J. Mayer, Esq., Tennessee Human Rights Commission, 530 Church Street, Nashville, Tennessee 37243-0745, (615) 741-5825.

Julius Sloss,  
Executive Director  
Tennessee Human Rights Commission

**EMERGENCY RULES  
OF THE  
TENNESSEE HUMAN RIGHTS COMMISSION**

**CHAPTER 1500-1  
COMMISSIONER'S HEARINGS**

**AMENDMENTS**

Subparagraph (1)(b) of Rule 1500-1-.05 When Hearing Ordered is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the subparagraph shall read:

- (b) The Commission shall thereupon appoint a presiding hearing examiner and may, in its discretion, appoint additional hearing examiners. If additional hearing examiners are appointed, a simple majority of such examiners may make a recommendation to the Commission after a hearing.

**Authority:** T.C.A. §§4-21-202(9); 4-21-202(10); 4-21-304(a).

Paragraph (15) of Rule 1500-1-.05 Who Shall Conduct is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the paragraph shall read:

- (15) Who shall conduct. Hearings shall be conducted before a hearing examiner or hearing examiners to be appointed by the Commission. If two or more hearing examiners are appointed, the Commission shall designate one such examiner to act as the presiding hearing examiner.

*Authority:* T.C.A. §§4-21-202(9); T.C.A. 4-21-202(10); 4-21-304(a).

The emergency rules set out herein were properly filed in the Department of State on the 7th day of September, 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 18th day of February, 2001. (09-13)

## **WILDLIFE RESOURCES COMMISSION - 1660**

### **CHAPTER 1660-1-2 RULES AND REGULATIONS FOR BIRDS**

### **CHAPTER 1660-1-8 RULES AND REGULATIONS OF HUNTS**

#### **STATEMENT OF NECESSITY REQUIRING EMERGENCY RULE AMENDMENTS**

Pursuant to T.C.A. §4-5-208, the Tennessee Wildlife Resources Commission is promulgating these emergency rule amendments regarding procedures for determining the daily waterfowl hunting priority for hunters to hunt waterfowl on state managed lands from waterfowl blind sites permitted by the Tennessee Wildlife Resources Agency through the draw blind procedures. These emergency rule amendments are necessary in order to clarify the existing rules in light of a recent court interpretation appearing to change the Agency's long-standing interpretation of Rule 1660-1-2-.02(1)(c). These emergency rule amendments clarify procedures for determining who has priority to hunt on any given legal hunting day from a waterfowl blind site which is permitted through the draw system. Unless these emergency rule amendments are adopted clarifying these procedures, the cloud cast on the interpretation of Rule 1660-1-2-.02(1)(c), which time prohibits removal through the normal rulemaking process, will limit or prevent their enforcement during the upcoming fall and winter waterfowl hunting season which commences November 18, 2000. Additionally, it will create confusion and the potential for confrontation among waterfowl hunters used to the longstanding interpretations.

Prior to the Court's reinterpretation of Rule 1660-1-2-.02(1)(c), the first arriving hunter or party of hunters at a draw blind had the exclusive use of the draw blind during the entire hunting day. The only exception to this exclusivity of use was the priority of use of the permittee if he/she were to arrive before legal shooting time. The reinterpretation eliminates the decades long exclusivity of use interpretation with the result that the first arriving hunters must somehow accommodate any and all hunters who show up throughout the day. The disturbance created by hunters arriving will disrupt the hunt by keeping away the ducks and creating an atmosphere which could lead to confrontation.

The court further reinterpreted Rule 1660-1-2-.02(1)(c) to give a purchaser of the use of a draw blind, the same “priority of use” provided exclusively to the permittee arriving before legal shooting time. In other words, the court’s reinterpretation treats the purchaser as the permittee with all the rights and benefits conferred by the rule including “priority of use”. Since the rule’s promulgation decades ago, only the person to whom the permit was issued by the Agency has been permitted to have “priority of use”. This will create confusion and the potential for confrontation among waterfowl hunters used to the longstanding interpretation.

In summary, Rule 1660-1-2-.02(1)(c) must be amended to assure the exclusivity of use during the hunting day for the waterfowl hunter or party of hunters first occupying the draw blind where either the permittee fails to arrive at all or he/she arrives after the legal shooting hour. It further needs to be amended to specifically define “permittee” as the person to whom the Agency issues the draw blind permit

Simply assuring exclusivity of use and specifically defining permittee does not overcome the court’s opinion that a purchaser of the use of a draw blind, in essence, steps into the shoes of the permittee thereby giving him/her the same priority rights as the permittee, which has not been the Agency interpretation. In order to overcome the future effect of the court’s reinterpretation, Rule 1660-1-8-.05(6)(g) must be amended to prohibit the transfer of a draw blind permit.

In light of the reasons set forth, the commission finds that there is an immediate danger to the welfare and safety of waterfowl hunters and parties of waterfowl hunters competing before sunrise each morning for access to and use of these remote and almost inaccessible waterfowl blind sites during the upcoming season and further finds that the nature of this danger is such that any other form of rulemaking would not protect the public thereby requiring adoption of these emergency rule amendments.

For copies of the entire text of the proposed amendment, contact: Gary W. Cook, Regional Manager, Region 1, Tennessee Wildlife Resources Agency, 200 Lowell Thomas Drive, Jackson, TN 38301.

Gary W. Cook  
Regional Manager, Region 1  
Tennessee Wildlife Resources Agency

#### **CHAPTER 1660-1-2 RULES AND REGULATIONS FOR BIRDS**

Paragraph (1), subparagraph (c) of Rule 1660-1-2-.02 Migratory Bird Hunting is amended by deleting it in its entirety and by substituting instead a new subparagraph (c) to read as follows:

- (c) The permittee, who is the person to whom the Agency issued the permit, must occupy his/her blind by the legal daily opening shooting time on days he/she wishes to hunt, and if the blind is unoccupied at that time by the permittee, the first person or party occupying said blind shall be entitled to the privilege of its exclusive and uninterrupted use until the end of the shooting hours of that day. Exclusive and uninterrupted use entitles the person or party to the right to exclude all others from the blind, at the person’s or party’s option, except for law enforcement personnel engaged in the performance of their duties. The permittee has priority use (exclusive and uninterrupted use) only if he/she is at the blind on or before the legal daily opening shooting time, regardless of whether or not the blind is occupied by another person or party, provided the permittee produces identification and his/her blind permit.

**Authority:** T.C.A. §§70-1-206 and 70-4-107.

**CHAPTER 1660-1-8  
RULES AND REGULATIONS OF HUNTS**

**AMENDMENT**

Paragraph (6), subparagraph (g) of Rule 1660-1-8-.05 Permit Applications and Drawings is amended by deleting it in its entirety and by substituting instead a new subparagraph (g) to read as follows:

No person shall buy, sell, barter, loan or transfer under any theory of law, or offer to buy, sell, barter, loan or transfer under any theory of law, a waterfowl draw blind site permit or the privilege of signing on a waterfowl draw blind site permit issued pursuant to this rule. Any person violating this rule and regulation is subject to have his/her hunting privileges revoked in addition to other penalties as prescribed by law.

*Authority: T.C.A. §§70-1-206 and 70-4-107.*

The emergency rules set out herein were properly filed in the Department of State on the 6th day of September, 2000, and will become effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 19th day of February, 2001. (09-19)

## **PROPOSED RULES**

### **TENNESSEE HUMAN RIGHTS COMMISSION - 1500**

Presented herein are proposed rule amendments of the Human Rights Commission submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Human Rights Commission 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 in Suite 400 of the Cornerstone Square Building located at 530 Church Street, Nashville, Tennessee 37243-0745; and in the Department of State, Eighth Floor, Snodgrass Tower, 812 8th Avenue North, Nashville, Tennessee 37243-0310; 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 copies of this proposed rule, contact: Scott J. Mayer, Tennessee Human Rights Commission, Suite 400, 530 Church Street, Nashville, TN 37243-0745, (615) 741-5825.

The text of the proposed amendment is as follows:

#### **AMENDMENT**

Rule 1500-1-.02 Practice and Procedure is amended in subsection (4)(e) "Definitions: Investigator" by deleting the rule and substituting the following language so that as amended, the rule shall read:

- (e) "Investigator" shall mean a Commissioner appointed by the Chairman, a member of the Commission staff designated by the Executive Director, or an approved contractor designated by the Executive Director, empowered to investigate the allegations of the complaint and to determine whether there is sufficient evidence to substantiate those allegations.

**Authority:** T.C.A. § 4-21-202(14), § 4-21-302(b).

Rule 1500-1-.04 Investigation and Conciliation is amended in subsection (1) Investigation by deleting the rule and substituting the following language so that as amended the rule shall read:

- (1) Investigation. After the filing of a complaint, the Executive Director or a subordinate supervisor designated by him or her shall designate an investigator from the Commission staff or from the group of approved contract investigators to investigate the complaint. The Chairman may at his or her discretion designate a Commissioner to direct the investigation as chief investigator. The designated investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.

**Authority:** T.C.A. § 4-21-202(3), § 4-21-302(b).

The proposed rules set out herein were properly filed in the Department of State on the 7th day of September, 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 29th day of January, 2001. (09-15)



**TENNESSEE HUMAN RIGHTS COMMISSION - 1500****CHAPTER 1500-1  
COMMISSIONER'S HEARINGS**

Presented herein are proposed rule amendments of the Tennessee Human Rights Commission submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Human Rights Commission 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 in Suite 400 of the Cornerstone Square Building located at 530 Church Street, Nashville, Tennessee 37243-0745; and in the Department of State, Eighth Floor, Snodgrass Tower, 812 Eighth Avenue North, Nashville, Tennessee 37210-0310; 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 copies of this proposed rule, contact: Scott J. Mayer, Tennessee Human Rights Commission, Suite 400, 530 Church Street, Nashville, TN 37243-0745, (615) 741-5825.

The text of the proposed amendment is as follows:

**AMENDMENT**

Subparagraph (1)(b) of Rule 1500-1-.05 When Hearing Ordered is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the subparagraph shall read:

- (b) The Commission shall thereupon appoint a presiding hearing examiner and may, in its discretion, appoint additional hearing examiners. If additional hearing examiners are appointed, a simple majority of such examiners may make a recommendation to the Commission after a hearing.

**Authority:** T.C.A. §§4-21-202(9); T.C.A. 4-21-202(10); 4-21-304(a).

Paragraph (15) of Rule 1500-1-.05 Who Shall Conduct is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the paragraph shall read:

- (15) Who shall conduct. Hearings shall be conducted before a hearing examiner or hearing examiners to be appointed by the Commission. If two or more hearing examiners are appointed, the Commission shall designate one such examiner to act as the presiding hearing examiner.

**Authority:** T.C.A. §§4-21-202(9); T.C.A. 4-21-202(10); 4-21-304(a).

The proposed rules set out herein were properly filed in the Department of State on the 7th day of September, 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 29th day of January, 2001. (09-14)

## **PUBLIC NECESSITY RULES**

### **PUBLIC NECESSITY RULES NOW IN EFFECT**

- 1240 - Department of Human Services - Family Assistance Division - Public necessity rules dealing with the Families First program, 8 T.A.R. (August 2000), chapter 1240-1-50, Standard for Need/Income - Filed July 3, 2000; effective through December 15, 2000. (07-06)
- 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 ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF WATER POLLUTION CONTROL  
THE WATER QUALITY CONTROL BOARD**

**CHAPTER 1200-4-13  
NEW RULES**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

In the session of the General Assembly that concluded on June 28, 2000, P. Ch. 854, the Inter-Basin Water Transfer Act was enacted. Section eight of the Act mandates the Water Quality Control Board to promulgate rules implementing the Act to be effective by October 1, 2000. This prescribed period of time precludes utilization of other rulemaking procedures in the Uniform Administrative Procedures Act for promulgation of permanent rules. See T.C.A. §4-5-209(a)(4).

For a copy of this public necessity rule contact: Glenda Stiles, 6<sup>th</sup> floor, L&C Annex, 401 Church Street, Nashville, TN 37243, Tennessee Department of Environment and Conservation, and (615) 532-0625.

Paul E. Davis, Director  
Division of Water Pollution Control

**DIVISION OF WATER POLLUTION CONTROL  
THE WATER QUALITY CONTROL BOARD  
CHAPTER 1200-4-13  
NEW RULES**

New Rule Chapter 1200-4-13, Inter-Basin Water Transfers shall read as follows:

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1200-4-13-.01 Purpose, Scope, and Applicability	1200-4-13-.07 General Permits
1200-4-13-.02 Definitions	1200-4-13-.08 Enforcement and penalties
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1200-4-13-.04 Public Involvement	1200-4-13-.10 Annual Certification
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**1200-4-13-.01 PURPOSE, SCOPE, AND APPLICABILITY**

(1) Purpose of The Inter-Basin Water Transfer Act

As the population and demand for water resources grow, it is prudent to engage in planning for the future and to have an explicit mechanism in place to regulate proposals for the diversion of water from one river basin to another. By removing water from rivers, such inter-basin transfers raise issues of the protection of the public health, safety, welfare and the environment, as the water is no longer available for use in the original stream. The primary purpose of The Inter-Basin Water Transfer Act is to allow regulation on the basis of the quantity of water in river basins. Although the common law addresses some of these concerns, it relies on after-the-fact litigation

rather than a modern regulatory system. As The Inter-Basin Water Transfer Act is remedial and police power legislation, the General Assembly has declared that it shall be liberally construed to effectuate its purpose.

(2) Purpose of this Rule Chapter

The purpose of this Rule Chapter is to implement The Inter-Basin Water Transfer Act through establishing procedures and requirements for permit application, processing, terms and conditions for permits, and otherwise regulate the inter-basin transfer of water.

(3) Who must apply for a permit

(a) All persons or entities:

1. which have been granted powers by the State of Tennessee to acquire water, water rights and associated property by eminent domain or condemnation; or
2. which acquire or supply water for the use or benefit of public water supply systems as defined in Title 68, Chapter 221, Section 703,

shall, when proposing a new or increased withdrawal of surface water or ground water for the purpose of transferring and/or diverting some or all of it out of a river basin either directly or through one (1) or more intermediaries, first apply for and obtain a permit from the commissioner, or his or her designee, prior to such diversion or transfer; provided, however, that in the case of ground water withdrawal this section shall only apply if the loss of the ground water has a significant potential to adversely affect the flow of a Tennessee surface water.

(b) Subparagraph (a) states who must apply for a permit as it is stated in P.Ch. 584. Without limiting what is stated there, the following are examples of entities that must apply for a permit:

1. A new public water system whose service area will include an area that is outside of the basin of origin;
2. A public water system that proposes a new withdrawal point that is not in the same basin as some or all of the system;
3. A public water system that proposes to increase the amount it is withdrawing in order to transfer some or all of it to a system in a basin different from the basin of origin;
4. A public water system that proposes to increase the amount it is withdrawing in order to transfer some or all of it to another system in the basin of origin that will then transfer the water to a system in a basin different from the basin of origin; and
5. A private individual or corporation that proposes to withdraw water and transfer it to a public water system in a basin different from the basin of origin, either directly or through an intermediary.

*Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.*

## 1200-4-13-.02 DEFINITIONS

When used in this Rule the following terms have the meanings given below unless otherwise specified:

“Act” means The Inter-Basin Water Transfer Act, P.Ch. 584 of the Acts of 2000.

“Basin” or “river basin” means the entire topographic extent of the ten watersheds and combinations of watersheds named in §4 of the Act. Maps of these basins may be viewed at the department’s web site, currently at: <http://www.state.tn.us/environment/epo/basin/index.html>.

“Basin of origin” means the river basin where the point of withdrawal for a transfer is located.

“Board” means the Water Quality Control Board.

“Commissioner” means the commissioner of the department of environment and conservation or the commissioner’s duly authorized representative, or in the event of the commissioner’s absence, or a vacancy in the office of commissioner, the deputy commissioner.

“Department” means the department of environment and conservation.

“Downstream basin” means a basin that is downstream of the basin of origin.

“Intermediaries” means any water systems or other persons that receive water from a withdrawing system and either transfer it to another basin or pass it on to another intermediary.

“Losing river” or “Losing river basin” means a river or river basin which sustains a decrease in water as the result of a diversion or transfer of water to a different river basin and there is no significant return of the water to the river or river basin of origin.

“Permit” means an Inter-Basin Water Transfer Permit. Permits are of two types, individual permits are issued for particular transfers after an application is made describing the particular project as provided in rules .03 through .06; general permits are issued by the commissioner for categories or classes of transfers and a person may be authorized for a transfer under the coverage of a general permit by filing a Notice of Intent, as provided in rule .07.

“Person” means any or all persons, including individuals, firms, partnerships, associations, limited liability companies, public or private institutions, municipalities or political subdivisions, federal or state governmental agencies, or private or public corporations organized under the laws of this state or any other state or country.

“Potentially affected communities” means those units of local government, e.g., municipalities, counties, or utility districts, that have a public water system that withdraws water from a river basin or municipalities that are located on the same stream downstream of a proposed transfer within fifty (50) river miles of the proposed withdrawal point.

“Potentially affected water users” means potentially affected communities and persons with an NPDES permit for a discharge, persons with a permit for a withdrawal of water, and downstream of a proposed transfer within fifty (50) river miles of the proposed withdrawal point.

“Receiving river basin” means a river basin which is the recipient of an increase in water, over and above that occurring naturally, as the result of a transfer of water from a different river basin.

“Return of water” or “return” means water that is returned to the basin of origin, or a downstream basin after a transfer to a different basin.

“Seven day, ten year low flow” or “7Q10 flow” or “low flow” means the lowest average daily flow for a duration of seven consecutive days with a recurrence interval of ten years and which is determined for the point of withdrawal from an unregulated stream, or for a withdrawal from a regulated stream, the minimum critical flow occurring once in ten years as determined by an analysis of records of operation and approved by the Commissioner.

“Significant potential to affect the flow” means, in the context of whether a ground water withdrawal is likely to affect a surface water, a withdrawal of ground water in a location that:

- (a) is in close proximity horizontally and vertically to a stream; and
- (b) has ground water with a significant degree of hydraulic connection to the surface water.

“Surface water” means any water located on the land surface which is not derived by pumping from ground water.

“Transfer” means the withdrawal, diversion, or pumping of surface water from one river basin and the use or discharge of all or any part of the water in a basin different from the basin of origin.

“Transfer facility” means any natural or man-made structure used to effect a transfer including, but not limited to, pumps, pipelines, canals, storage units, water treatment units and wastewater treatment units.

“Withdrawal” means the diversion or pumping of water out of a surface stream or from ground water if the loss of the ground water has a significant potential to adversely affect the flow of a Tennessee surface water in the basin of origin, whether or not there is a transfer.

*Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.*

### **1200-4-13-.03 INDIVIDUAL PERMIT APPLICATIONS**

- (1) Information required in a permit application.

Any person required to apply for a permit for an inter-basin water transfer under rule 1200-4-13-.01(3) and §5 of the Act shall submit an application for such permit on forms furnished, upon request, by the commissioner. The application shall require an applicant to provide the commissioner the following information:

- (a) The volume of the proposed withdrawal and the proposed transfer stated in gallons per day that the applicant seeks to be authorized;
- (b) Identification of all of the withdrawal, return, and transfer points;
- (c) The volume of water that will be returned to the basin of origin or a downstream basin;
- (d) The peak capacity of each major component in the proposed withdrawal and transfer facilities;
- (e) Engineering and economic justification for the capacity of each major component of the proposed withdrawal and transfer facilities;
- (f) An assessment of the hydraulic and environmental impacts of the withdrawal on the losing river;
- (g) An engineering, environmental, and economic assessment of the feasibility of utilizing alternate water sources by the water system in the receiving basin;

- (h) A listing of conservation programs or practices occurring or proposed of the system in the receiving river basin;
  - (i) The proposed date upon which the water transfer is to commence;
  - (j) The purpose and justification for the proposed transfer; and
  - (k) Any other appropriate information deemed necessary by the commissioner for review of the proposed transfer.
- (2) All permit applications shall be signed as follows:
- (a) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.
  - (b) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
  - (c) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).
- (3) Interface with other required permits under the Act.
- (a) In some situations an activity may have to apply for both an inter-basin transfer permit and a permit under the Water Quality Control Act for the withdrawal. The latter is sometimes referred to as an Aquatic Resource Alteration Permit (ARAP). In such a situation the Division of Water Pollution Control shall have the applicant file one application for both permits that contains all information necessary for both and then shall process the application and either issue it with all conditions required by both Acts or deny it as required by either Act. The regulations for ARAP permits are found at 1200-4-7-.01 et seq.
- (4) Application Fees

The application fees for individual inter-basin transfer permits shall be \$1,000.00 for each 500,000 gallons per day, or fraction thereof, authorized to be transferred by the permit. This shall be calculated based upon the maximum amount authorized by the permit. This fee shall apply to new applications, renewals, or those modifications that extend the term of the permit. If an applicant for a permit modification only seeks an increase of the amount authorized to be transferred for the same permit term, then the fee shall be calculated on the basis of the difference in the two amounts.

**Authority:** T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.

#### **1200-4-13-.04 PUBLIC INVOLVEMENT**

- (1) After receipt of an application, the department staff shall approve a Public Notice to seek public participation and comment on the application. The approved Public Notice shall be distributed to interested persons and shall be circulated within thirty days of receipt of a completed application as follows:

- (a) In order to inform interested and potentially interested persons of the proposed activity, the Public Notice will include the following information:
    - 1. Name, address, and telephone number of the applicant;
    - 2. Name and address of TDEC contact person;
    - 3. A brief description of the proposed withdrawal and transfer, including the volumes;
    - 4. The names of the specific waters affected by the proposed activity as well as the basin of origin and the receiving basin;
    - 5. The purpose of the proposed transfer;
    - 6. The procedure to submit comments on the proposed activity and the close of the comment period which shall not be sooner than thirty (30) days from receipt of the application;
    - 7. The procedure for requesting a public hearing; and
    - 8. A brief description of the procedure for the commissioner to make a final determination to issue a permit.
  - (b) TDEC will distribute the approved Public Notice to interested persons who have requested TDEC notify them of inter-basin transfer permit applications and by posting it on the TDEC website.
  - (c) The Applicant shall distribute the approved Public Notice as follows:
    - 1. Publish a notice of the permit application once a week for four consecutive weeks in a newspaper of general circulation in each potentially affected community in the river basin of origin;
    - 2. Provide notice of the application to a responsible official with each potentially affected community and water user within the proposed basin of origin by certified mail, return receipt requested; and
    - 3. Post a minimum of three public notices in public buildings, e.g., courthouses, libraries, city halls, in each potentially affected community in the river basin of origin.
- (2) During the comment period, any person who may be adversely affected by a water transfer may submit a statement to the commissioner briefly outlining why the person believes he may be adversely affected and making any comments in regard to permit issuance or denial or permit conditions. Upon receipt of such a statement, the commissioner will schedule a public hearing on the permit application. Notice shall be given of the public hearing at least thirty days prior to the hearing.

*Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.*

#### **1200-4-13-.05 CRITERIA FOR ISSUANCE OF INDIVIDUAL PERMITS**

- (1) In reviewing a permit application, the commissioner shall consider information developed through studies, analyses, or inquiries undertaken by the commissioner and information and comments submitted to the commissioner by the applicant, public agencies, affected persons, and the public.



- (2) The following factors will be used by the commissioner in making a determination on a permit application:
- (a) the quantity of the proposed withdrawal and the stream flow of the losing river(s), with special concern for low flow conditions;
  - (b) protection of the present uses, and consideration of projected stream uses of the losing river(s), including but not limited to, present agricultural, municipal, industrial and in-stream uses, and assimilative needs, with special concern for low flow conditions;
  - (c) protection of the water quality in the losing river(s) at low flow conditions;
  - (d) the reasonably foreseeable future water needs of the losing river basin;
  - (e) the reasonably foreseeable future water needs of the applicant for the water to be transferred, including methods of water use, conservation, and efficiency of use;
  - (f) the beneficial impact of any proposed transfer, and the capability of the applicant to implement effectively its responsibilities under the requested permit;
  - (g) the nature of the applicant's use of the water, to determine whether the use is reasonable and beneficial;
  - (h) whether the proposed project shall promote conservation of water;
  - (i) the feasibility, the costs, and the environmental impacts of alternative sources of supply;
  - (j) the requirements of other state or federal agencies with authority relating to water resources;
  - (k) the availability of water in the losing river basin to respond to emergencies, including drought;
  - (l) whether the project shall have any beneficial or detrimental impact on navigation, hydropower or other power generation, fish and wildlife habitat, aesthetics, or recreation;
  - (m) the quantity, location, and timing of water returned to the basin of origin or a downstream basin;
  - (n) climatic conditions;
  - (o) any offsetting increases in flow in the basin of origin that may be arranged through permit conditions;
  - (p) the number of downstream river miles from which water will be diverted as a result of the transfer; and
  - (q) such other factors as are reasonably necessary to carry out the purposes of the Act and this rule chapter.
- (3) No transfer of water may be permitted at any time that would impair the classified uses of a losing river. Furthermore, no transfer of water shall cause the remaining flow in the losing river basin to be less than the seven day, ten year low flow as established prior to the inter-basin transfer unless a condition on the permit states that the transfer of water shall be required to cease when the instantaneous stream flow of the river of origin is equal to or less than a specified value.

**Authority:** T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.

**1200-4-13-.06 TERMS AND CONDITIONS FOR INDIVIDUAL PERMITS**

- (1) Based upon review of all pertinent information the commissioner may issue, deny or issue a permit with conditions.
- (2) When issuing a permit, the commissioner may include conditions in the permit, including but not limited to the following:
  - (a) The amount of water approved for transfer may be varied seasonally;
  - (b) The transfer of water shall be required to cease or decrease when the instantaneous stream flow of the river basin of origin is equal to or less than a specified value;
  - (c) Special provisions in order to promote an adequate water supply for the state or to mitigate any future adverse conditions resulting from the transfer;
  - (d) Installation, maintenance and use of stream flow monitoring equipment;
  - (e) Establishment and reporting of transfer activities by the permittee.
- (3) Upon the issuance by the Governor of a declaration or proclamation of an emergency relating to water resources, the commissioner may:
  - (a) waive the usual permitting requirements and issue a temporary emergency transfer permit. Any such permit must be limited to meet the needs created by the emergency, and any such permit may be issued for a period no longer than six months or the duration of the Governor's declaration or proclamation, whichever period is shorter; or
  - (b) modify or revoke and reissue any inter-basin transfer permit.
- (4) Permits shall be issued for a renewable term of not more than five years. The commissioner may coordinate permits with the issuance cycle for NPDES permits in a watershed.
- (5) Permits may contain such terms and conditions as are appropriate to carry out the purposes of the Act and this chapter. This includes, but is not limited to, provisions for filing periodic reports on the amount transferred and the flow in the losing river.
- (6) Applicants may apply for permit modifications to increase the authorized transfer amount or for other reasons within the term of the permit.
- (7) The Commissioner may modify, suspend, or revoke a permit for the reasons specified in section 7 of the Act.
- (8) A transfer permit may be renewed following a full review by the commissioner of all past and current information relating to the transfer. An application for transfer permit renewal shall be filed by the applicant with the commissioner a minimum of six months prior to permit expiration.
- (9) No permit may be transferred from one person to any other person except upon review and approval by the commissioner. In reviewing a request for a permit transfer, the commissioner may modify any of the permit terms.

**Authority:** T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.

**1200-4-13-.07 GENERAL PERMITS**

- (1) The commissioner may issue a general permit for a category of transfer activities. Such permits shall be issued using the same process of public notification as would be used for an individual permit except that the department will bear the costs involved. Such permits shall require:
  - (a) that any person intending to make use of a general permit for authorization of any transfer must file a Notice of Intent and pay the processing fee specified in the general permit; and
  - (b) that the department will issue a response either confirming that the general permit is applicable or stating why it is not and directing the person to file an individual permit application.

*Authority:* T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.

**1200-4-13-.08 ENFORCEMENT AND PENALTIES**

- (1) Any person who
  - (a) fails to make a timely application or renewal application for a permit required by the Act;
  - (b) commences an inter-basin transfer without having obtained a permit under the Act and these rules;
  - (c) fails to comply with the terms of a permit; or
  - (d) fails to submit a true and accurate report required by the Act and these rules;
 is subject to a penalty of up to \$10,000.00 per day per violation as provided in §9 of the Act.
- (2) The commissioner is also authorized to file an action in court to address any violation of the Act seeking any remedy available under the Act or at common law.

*Authority:* T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.

**1200-4-13-.09 HEARINGS**

- (1) Any person actually aggrieved by the decision of the commissioner to grant or deny a transfer permit may request a hearing before the Water Quality Control Board by filing a written petition within 30 days of the issuance of the decision. With the exception of an applicant for a transfer permit, any person who has not submitted a written comment under 1200-4-13-.04 above, indicating how such person will be adversely affected by a water transfer in a manner or to a degree significantly different from the general public, is not an aggrieved party within the meaning of these rules.
- (2) Any person named in a Commissioner's Order or assessment may request a hearing before the Water Quality Control Board by filing a written petition within 30 days of the receipt of the order or assessment. The petition shall set forth the grounds and reasons for the appeal. If such a petition is not filed within the 30 days, the violator shall be deemed to have consented to the assessment and it shall become final.
- (3) Any such hearing will be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, T.C.A. §4-5-301 et seq.

*Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.*

#### **1200-4-13-.10 ANNUAL CERTIFICATION**

- (1) On or before October 1 of every year, any person who operated an existing inter-basin transfer on May 31, 2000, either directly or through one or more intermediaries, shall file with the department a statement under oath certifying that there has been no increase in the transfer together with flow or pumping records documenting the amount transferred. The department may develop a form for this purpose.

*Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.*

#### **1200-4-13-.11 PROTECTED AREAS**

Protected areas, as provided for in Section 12 of the Act, may be established through a rulemaking action by the Water Quality Control Board. Any person desiring to have such an area established may request this action by sending a letter to the Board stating the basis for such action. The Uniform Administrative Procedures Act also allows a more formal process for requesting a rulemaking action in T.C.A. §4-5-201.

*Authority: T.C.A. §§69-3-105, P.Ch. 854, Acts of 2000, 4-5-101 et seq.*

The public necessity rules set out herein were properly filed in the Department of State on the 29th day of September, 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 13th day of March, 2001. (09-29)

**DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940**

**OFFICE OF THE COMMISSIONER**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

Pursuant to Court Order in the case of *People First of Tennessee, et al vs. Clover Bottom Developmental Center, et al*, Case No. 3-95-1227, in the United States District Court for the Middle District of Tennessee, Nashville Division, certain changes are required to be made to state rules regarding admitting individuals to the Abuse Registry. The Legislature mandated that the Department of Mental Health and Developmental Disabilities shall have authority to establish rules, forms, and any necessary standards and procedures to implement any orders of the Federal Court in the above case, including those admitting individuals to the Abuse Registry.

For complete copies of the text of the notice, please contact Cynthia Clark Tyler, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, 26<sup>th</sup> Floor, Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243, telephone 615-532-6517.

Elisabeth Rukeyser, Commissioner  
Tennessee Department of Mental Health and  
Developmental Disabilities.

**PUBLIC NECESSITY RULES  
OF  
TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
OFFICE OF THE COMMISSIONER**

**CHAPTER 0940-1-4  
REPORTING TO STATEWIDE ABUSE REGISTRY OF SUSPECTED CLIENT ABUSE, NEGLECT, MIS-  
TREATMENT**

**NEW RULES**

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			individuals receiving services through the Division

**0940-1-4-.01 PURPOSE**

The purpose of these rules is to set forth the procedure for reporting to the statewide abuse registry incidents of suspected abuse, neglect, and/or mistreatment of individuals with mental retardation and/or developmental disabilities.

**Authority:** *T.C.A. §§33-1-202, 33-1-203, 33-2-504, 33-2-512, 33-3-104, 68-11-1001 et seq. Settlement Agreement in People First v. Clover Bottom, et al., relating to Clover Bottom Developmental Center, Greene Valley Developmental Center, and Nat T. Winston Developmental Center.*

**0940-1-4-.02 DEFINITIONS**

For the purpose of these rules, the terms listed below shall be interpreted as follows:

- (1) Division - The Division of Developmental Disabilities, Tennessee Department of Mental Health and Developmental Disabilities
- (2) Abuse - Physical abuse, sexual abuse, or verbal abuse as defined in these rules.
- (3) Physical abuse - Any act or action by an employee, volunteer, or other care giver to hit, slap, push, punish, throw things at, or otherwise physically hurt or injure an individual served. Any use of restraint banned by the Division (take down, prone restraint) by agencies under the scope of this policy, is also considered physical abuse.
- (4) Sexual abuse - Any sexual contact or attempt at sexual contact (includes kissing, excessive hugging, sexual touching, oral sex/intercourse) by an employee, volunteer, or other care giver with an individual served.
- (5) Verbal abuse - Any expression by an employee, volunteer, or other care giver, which threatens, harasses, frightens, or humiliates an individual served.
- (6) Mistreatment - Any act or actions by an employee, volunteer, or other care giver that threatens, harasses, or violates the basic rights of an individual served, including any action to steal from an individual served or to fiscally or sexually exploit an individual served. An example of fiscal exploitation: A group of staff and persons receiving services go out to a restaurant to eat together and the staff talks one of the service recipients into paying the bill for everyone at the table.
- (7) Misappropriation of property - Any act or actions by an employee, volunteer, or other care giver that makes or causes use of property of an individual served to the disadvantage of that individual, in any way which violates state or federal law, or the rules or policies of the Division, with or without the consent of the individual served.
- (8) Neglect - Any failure of an employee, volunteer, or other care giver to meet the person's basic needs for safety, supervision, and general well-being in such a manner that the individual is harmed or placed at risk of harm. Note: Staff leaving individuals served unattended in their home or in a vehicle, etc. (When it is not authorized in his/her ISP); staff attending to personal matters (e.g., shopping, caring for personal family members, etc.) instead of attending to the individual served, all constitute neglect.
- (9) Abuse registry - A centralized system for registration of an employee, volunteer or other care giver of an individual receiving services through the Division who has had substantiated allegation(s) of abuse, neglect or mistreatment of such individual.
- (10) Abuse Registry Review Committee - The committee developed by the Division to review substantiated allegations of abuse, neglect, mistreatment and/or misappropriation of property for purposes of placement on the abuse registry.
- (11) Investigation - A formal procedure for the review and examination of allegations of complaints of abuse, neglect, and/or mistreatment of an individual receiving services through the Division.

**0940-1-4-.03 ABUSE INVESTIGATION PROCEDURES**

- (1) In accordance with the Settlement Agreement in *People First v. Clover Bottom*, all reportable incidents of alleged or suspected abuse, neglect, or mistreatment must be investigated by the Office of Investigation of the Division. Investigations must begin in a timely manner and should be completed within 30 days unless an extension is approved by the State Investigations Coordinator.
- (2) A detailed written report of the investigation and its conclusion shall be prepared. The report shall include the following:
  - (a) The allegation, complaint, or evidence giving rise to the investigation,
  - (b) Identification of alleged perpetrator,
  - (c) Investigator's conclusion as to whether allegation has been substantiated, including any violations of departmental policy or rule.
- (3) Staff who are alleged to have committed abuse, neglect, or mistreatment will be reassigned or placed on administrative leave until the results of the investigation are complete. Requests for exceptions to this requirement may be submitted to the Division's Investigations Coordinator for consideration.
- (4) Upon completion of the investigation, if charges of abuse, neglect, or mistreatment are substantiated, appropriate action shall be taken to discipline the alleged perpetrator, up to and including discharge or separation from employment.

**0940-1-4-.04 PROCEDURE FOR PLACEMENT ON THE ABUSE REGISTRY OF PERSONS WHO HAVE ABUSED, NEGLECTED, MISTREATED OR MISAPPROPRIATED THE PROPERTY OF INDIVIDUALS RECEIVING SERVICES THROUGH THE DIVISION.**

- (1) If, based on the investigation, the Division determines that abuse, neglect, mistreatment and/or misappropriation of property has occurred, the case shall be forwarded to the Abuse Registry Committee.
- (2) The Abuse Registry Committee may, upon review of the cases submitted:
  - (a) Determine whether further information is necessary to substantiate a charge of abuse, neglect, mistreatment or misappropriation of property. If necessary, further information shall be requested.
  - (b) Determine which cases shall be submitted for inclusion on the Abuse Registry. The names of individuals convicted of federal, state or local criminal charges involving elements constituting abuse, neglect, mistreatment or misappropriation of a vulnerable individual's property shall be entered on the Abuse Registry.
- (3) Upon determination that a case shall be forwarded for inclusion on the Abuse Registry, the following shall occur:
  - (a) The individual(s) implicated in the investigation shall be notified in writing at their last known mailing address.
  - (b) The implicated individual(s) will be notified within ten (10) days of the determination of inclusion on the registry by the Abuse Registry Committee.

- (c) The written notice to the implicated individual(s) shall include:
1. The nature of the allegation(s);
  2. The date and time of occurrence;
  3. The individual's right to a hearing, if requested, in writing, within thirty (30) days from the date of the notice;
  4. The fact that the failure to request a hearing in writing within thirty days will result in reporting the substantiated findings to the appropriate occupational registry or licensure authority;
  5. The consequences of waiving the right to a hearing;
  6. The consequences of a finding through the hearing process that the alleged abuse, neglect, mistreatment, or misappropriation of property did occur; and
  7. The fact that the individual has the right to be represented by an attorney at the individual's own expense.
- (a) If requested in writing, the hearing will be conducted as a contested case hearing pursuant to the Tennessee Administrative Procedures Act, T.C.A. 4-5-301 et seq. The hearing and the hearing record will be completed within one hundred twenty (120) days from the date of written request of the hearing, unless waived by the parties.
- (b) If the implicated individual chooses not to request a hearing, the determination by the Abuse Registry Committee shall be final. The individual's name shall then be forwarded to the Tennessee Department of Health pursuant to T.C.A. 68-11-1001 et seq.
- (c) The implicated individual may not want to request a hearing but may want to submit additional information in mitigation of the allegations against them. Such information may be submitted, in writing, to the Abuse Registry Committee for inclusion in the Abuse Registry record.
- (d) Upon a finding that an individual has abused, neglected, mistreated or misappropriated the property of an individual, or if the individual waives the right to a hearing, the finding shall be reported within ten (10) days to the implicated individual.
- (e) An individual's name may be removed from the Abuse Registry for the reasons set forth in T.C.A. 68-11-1004(e).
- (f) No individual listed on the Abuse Registry shall be allowed to volunteer or be employed to provide care to individuals receiving services through the Division.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 33-1-202, 33-1-203, 33-2-504, 33-2-512, 33-3-104, 68-11-1001 et seq.

The public necessity rules set out herein were properly filed in the Department of State on the 21st day of September, 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 5th day of March, 2001. (09-20)



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## **RULEMAKING HEARINGS**

### **DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF INSURANCE**

There will be a hearing before the Department of Commerce and Insurance to consider the repeal of rules dealing with: (a) the written examination for insurance agents' licenses, pursuant to Tenn. Code Ann. § 56-1-702; (b) agents writing travel accident or travel personal property insurance required to pass written examination, pursuant to Tenn. Code Ann. § 56-1-702; (c) the Articles of Association and Rules of Practice of the Tennessee Temporary Joint Underwriting Association for Medical Malpractice Insurance, pursuant to Tenn. Code Ann. § 56-1-702. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A on the Fifth Floor of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at nine (9) o'clock in the morning on the 17th day of November, 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 initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Commerce and Insurance's ADA Coordinator, Ms. Verna Norris, at Fifth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, and (615) 741-0481.

For a copy of the entire text of this notice of rulemaking hearing, contact James B. Christoffersen, Staff Attorney, 312 Eighth Avenue North, Twenty-Fifth Floor, William R. Snodgrass Tennessee Tower, Nashville, Tennessee 37243, Department of Commerce and Insurance, and (615) 741-2199.

### **REPEALS**

Chapter 0780-1-16 Written Examination for Agent's License is repealed in its entirety.

**Authority:** *T. C. A. §56-1-702.*

Chapter 0780-1-26 Agents Writing Travel Accident or Travel Personal Property Insurance Required to Pass Written Examination is repealed in its entirety.

**Authority:** *T. C. A. §56-1-702.*

Chapter 0780-1-31 Articles of Association and Rules of Practice of the Tennessee Temporary Joint Underwriting Association for Medical Malpractice Insurance is repealed in its entirety.

**Authority:** *T. C. A. §56-1-702.*

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-36)

**DEPARTMENT OF COMMERCE AND INSURANCE - 0780**  
**DIVISION OF INSURANCE**

There will be a hearing before the Department of Commerce and Insurance to consider the promulgation of rules respecting the investment practices of self-insured workers' compensation pools, pursuant to Tenn. Code Ann. §§ 50-6-405(c) and 56-1-702. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A on the Fifth Floor of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at nine (9) o'clock in the morning on the 17th day of November, 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 initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Commerce and Insurance's ADA Coordinator, Ms. Verna Norris, at Fifth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, and (615) 741-0481.

For a copy of the entire text of this notice of rulemaking hearing, contact: G. Everett Sinor, Jr., Staff Attorney, 312 Eighth Avenue North, Twenty-Fifth Floor, William R. Snodgrass Tennessee Tower, Nashville, Tennessee 37243, Department of Commerce and Insurance, and (615) 741-2199.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**  
**CHAPTER 0780-1-54**  
**INVESTMENTS**

Rule 0780-1-54-.14 Investments is amended by designating the current language contained therein as paragraph (1), and by adding the following language as a new paragraph (2):

- (2) Furthermore, consistent with § 50-6-405(c)(2), funds not needed for current obligations may be invested by the board of trustees in "Tennessee securities" as defined in § 56-4-210(b). The board of trustees of each workers' compensation pool shall adopt an investment policy. Such policy shall address credit, quality of investments, maximum maturity of investments and such other matters as the board deems appropriate. Real estate investments may not be undertaken without the prior approval of the commissioner of commerce and insurance.

*Authority:* T. C.A. §§50-6-405(c) and 56-1-702.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-37)

**DEPARTMENT OF COMMERCE & INSURANCE - 0780**  
**TENNCARE DIVISION**  
**&**  
**INSURANCE DIVISION**

There will be a hearing before the Department of Commerce & Insurance to consider the promulgation of rules and amendment of rules pursuant to T.C.A. § 56-32-218(a). 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 Conference Room A, Fifth Floor of the Davy Crockett Building located at 500 James Robertson Parkway, Nashville, TN 37243, at 2:00 p.m. CST on the 17th day of November, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Commerce & Insurance to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow for the Department of Commerce & Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Commerce & Insurance's ADA Coordinator, Shannon Parker at 500 James Robertson Parkway Nashville, TN 37243, and 615-741-0481.

For a copy of the entire text of this notice of rulemaking hearing, contact: Sandra Keifert, 500 James Robertson Parkway, Suite 750, Department of Commerce & Insurance, TennCare Division, 615-741-2677.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 0780-1-28-.01 Definition of Terms is amended by deleting the language contained therein and so that as amended the rule shall read:

**0780-1-28-.01 STATEMENTS AND REPORTS – FORM AND CONTENTS.**

Any and all reports required to be filed by an HMO under T.C.A. § 56-32-208 shall be prepared in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual in effect for the period covered by the report.

*Authority:* T.C.A. § 56-32-218(a), T.C.A. § 56-32-208.

Rules 0780-1-28-.02 through 0780-1-28-.09 are amended by deleting the language contained therein.

*Authority:* T.C.A. § 56-32-218(a), T.C.A. § 56-32-208.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-38)

**DEPARTMENT OF COMMERCE & INSURANCE - 0780**  
**TENNCARE DIVISION**  
**&**  
**INSURANCE DIVISION**

There will be a hearing before the Department of Commerce & Insurance to consider the promulgation of rules pursuant to Section 53, Chapter No. 948, Public Acts, 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 Conference Room A Fifth Floor of the Davy Crockett Building located at 500 James Robertson Parkway, Nashville, TN 37243, at 2:00 p.m. CST on the 17th day of November, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Commerce & Insurance to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow for the Department of Commerce & Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Commerce & Insurance's ADA Coordinator, Shannon Parker at 500 James Robertson Parkway Nashville, TN 37243, and 615-741-0481.

For a copy of the entire text of this notice of rulemaking hearing, contact: Sandra Keifert, 500 James Robertson Parkway, Suite 750, Department of Commerce & Insurance, TennCare Division, 615-741-2677.

**SUBSTANCE OF PROPOSED RULES**

**DEPARTMENT OF COMMERCE AND INSURANCE**  
**DIVISION OF INSURANCE**  
**PREPAID LIMITED HEALTH SERVICE ORGANIZATIONS**

**NEW RULE**

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0780-1-70-.01 Statements and Reports – Form and Contents

**0780-1-70-.01 STATEMENTS AND REPORTS – FORM AND CONTENTS.**

Any and all reports required to be filed by a Prepaid Limited Health Service Organization under Section 34, Chapter No. 948, Public Acts, 2000, shall be prepared in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual in effect for the period covered by the report.

*Authority:* Section 53, Chapter No. 948, Public Acts, 2000, Section 34, Chapter No. 948, Public Acts, 2000;

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-39)

## **BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370**

There will be a hearing before the Tennessee Board of Communications Disorders and Sciences to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-17-105. 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. (CST) on the 21<sup>st</sup> day of November, 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 1370-1-.15, Disciplinary Actions, Civil Penalties, Assessment of Costs and Subpoenas, is amended by deleting item (4) (c) 1. (iii) (I) in its entirety and substituting instead the following language, so that as amended, the new item (4) (c) 1. (iii) (I) shall read:

- (4) (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 1370-1-.15, Disciplinary Actions, Civil Penalties, Assessment of Costs and Subpoenas, is amended, is amended by deleting subitems (4) (c) 1. (iv) (II) III. and (4) (c) 1. (iv) (II) V. in their entirety and substituting instead the following language, and is further amended by deleting subitem (4) (c) 1. (iv) (II) VI. in its entirety and renumbering the remaining subitem accordingly, so that as amended, the new subitems (4) (c) 1. (iv) (II) III. and (4) (c) 1. (iv) (II) V. shall read:

- (4) (c) 1. (iv) (II) 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
- (4) (c) 1. (iv) (II) 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 1370-1-.15, Disciplinary Actions, Civil Penalties, Assessment of Costs and Subpoenas, is amended by adding the following language as new item (4) (c) 1. (iv) (III):

- (4) (c) 1. (iv) (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.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, and 63-17-219.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-42)

**BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370  
COUNCIL FOR LICENSING HEARING INSTRUMENT SPECIALISTS**

There will be a hearing before the Tennessee Board of Board of Communications Disorders and Sciences' Council for Licensing Hearing Instrument Specialists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, and 63-17-203. 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 22<sup>nd</sup> day of November, 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 1370-2-.15, Disciplinary Actions, Civil Penalties, Informal Settlements, 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 Council, 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 Council; and

Rule 1370-2-.15, Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment of Costs and Subpoenas, is amended, is amended by deleting subitems (5) (c) 1. (iv) (II) III. and (5) (c) 1. (iv) (II) V. in their entirety and substituting instead the following language, and is further amended by deleting subitem (5) (c) 1. (iv) (II) VI. in its entirety and renumbering the remaining subitem accordingly, so that as amended, the new subitems (5) (c) 1. (iv) (II) III. and (5) (c) 1. (iv) (II) V. shall read:

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

Rule 1370-2-.15, Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment of Costs and Subpoenas, is amended by adding the following language as new item (5) (c) 1. (iv) (III):

- (5) (c) 1. (iv) (III) The Council shall do the following:
- I. By a vote of two thirds (2/3) of the council 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, 63-17-105, 63-17-203, and 63-17-219.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of September, 2000. (09-04)



**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 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 16th day of November, 2000.

Written comments will be included in the hearing records if received by the close of business November 16, 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 (November 16, 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. Jeryl Stewart 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 1200-3-5**  
**VISIBLE EMISSION REGULATIONS**

**AMENDMENT**

Rule 1200-3-5-.04 Exemption is amended by adding a paragraph with the following language “(4) The standards in this chapter shall not apply to fog obscurant screens generated for training purposes by the United States military on military bases. Provided that: (a) No hazardous air pollutants, as defined in Paragraph 1200-3-31-.02 (6) of these Regulations, shall be used for the generation of the fog obscurant screens. (b) The fog obscurant screens shall comply with the provisions of Chapter 1200-3-8 and Paragraph 1200-3-9-.03 (3) of these Regulations.” so that, as amended, the rule shall read:

- (1) Visible emissions from fuel-burning equipment used exclusively to provide space heating in a building containing not more than two (2) dwelling units shall not be subject to the provisions of this chapter.
- (2) Unless the visible emission standard was set under the authority of 1200-3-5-.01(2), (3), or (4), the visible emission standards of this chapter shall not apply where a source has an applicable visible emissions standard under chapter 1200-3-16.

- (3) If the installation of an in-stack opacity monitor is required by a standard contained in chapter 1200-3-16, then for an identical existing source to obtain the less restrictive opacity standard contained in chapter 1200-3-16 the installation of an in-stack opacity monitor meeting the specifications contained in rule 1200-3-10-.02(1)(d)1 shall be required. For situations where the installation of an in-stack opacity monitor would be required to obtain an opacity standard for an existing source equivalent to that set forth for an identical new source subject to chapter 1200-3-16, it is the responsibility of the source owner or operator to notify the Technical Secretary in writing that this revision to the source's existing opacity standard is requested and that the required in-stack opacity monitor will be installed in accordance with rule 1200-3-10-.02.
- (4) The standards in this chapter shall not apply to fog obscurant screens generated for training purposes by the United States military on military bases. Provided that:
  - (a) No hazardous air pollutants, as defined in Paragraph 1200-3-31-.02 (6) of these Regulations, shall be used for the generation of the fog obscurant screens.
  - (b) The fog obscurant screens shall comply with the provisions of Chapter 1200-3-8 and Paragraph 1200-3-9-.03 (3) of these Regulations.

*Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.*

This notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of September, 2000. (09-25)

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400  
DIVISION OF RADIOLOGICAL HEALTH**

There will be a hearing before the Tennessee Department of Environment and Conservation, Division of Radiological Health, to consider the promulgation of amendments pursuant to T.C.A. 68-202-101 *et seq.*, and 68-202-501 *et seq.* 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 17th Floor Conference Room of the L & C Tower located at 401 Church Street, Nashville, Tennessee at 1:00 p.m. (CST), on the 21st day of November, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Radiological Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days before the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at the Division of Radiological Health; L & C Annex, Third Floor; 401 Church Street; Nashville, TN 37243-1532; (615) 532-0364.

For a copy of this notice of rulemaking hearing, contact: Barbara A. Davis; Division of Radiological Health, L & C Annex, Third Floor; 401 Church Street; Nashville, TN 37243-1532, 615-532-0364.

### SUBSTANCE OF PROPOSED AMENDMENTS

Rule 1200-2-4-.07 Communications is amended by deleting the rule in its entirety and substituting the following, so that as amended Rule 1200-2-4-.07 shall read:

#### **1200-2-4-.07 NOTIFICATIONS, REPORTS AND OTHER COMMUNICATIONS.**

- (1) Notifications and reports required by these regulations, communications concerning these regulations and applications filed thereunder should be communicated as follows:

- (a) Telephone notifications and communications, 7:00 a.m. Central Time to 4:30 p.m. Central Time, except weekends and holidays:

Division of Radiological Health 615-532-0364

- (b) Telephone notifications, all other times:

Tennessee Emergency Management Agency (TEMA): 1-800-262-3300

- (c) Applications, written notifications, reports and communications:

Division of Radiological Health  
Tennessee Department of Environment and Conservation  
L & C Annex, Third Floor  
401 Church Street  
Nashville, Tennessee 37243-1532

- (d) Facsimile communications:

Division of Radiological Health 615-532-7938

- (2) Reserved.

**Authority:** *T.C.A. §68-202-101 et seq.*

Paragraphs (1) and (2) and subparagraphs (3)(a), (3)(b) and (3)(c) of Rule 1200-2-10-.24 Registration is amended by deleting the paragraphs and subparagraphs in their entirety and substituting the following, so that as amended the paragraphs and subparagraphs shall read:

#### **1200-2-10-.24 REGISTRATION AND FEE PAYMENT PROCEDURES.**

- (1) Registration:

- (a) Each person who receives ownership or possession of any radiation machine shall register. Registration is not required for ownership or possession of any radiation machine specifically excluded by Rule 1200-2-10-.07.

1. Each person who receives ownership or possession of any radiation machine other than an accelerator shall register within ten (10) days of receipt.

2. Each person who receives ownership or possession of any accelerator shall submit an application for a certified registration, as required in Chapter 1200-2-9, within ten (10) days of acquisition of the accelerator.
    - (i) An accelerator shall not be energized until the Division issues the certified registration.
    - (ii) The Division may grant approval for testing of an accelerator before issuance of the certified registration.
  - (b) Each person who provides inspection services under paragraph 1200-2-10-.27(4) shall register.
  - (c) Each person who assembles, installs or services radiation machines shall register.
  - (d) Registration shall be with the Division of Radiological Health on forms supplied by the Division. Forms may be obtained from the Division at the address given in Rule 1200-2-4-.07.
  - (e) Whenever information, such as equipment possessed, address, ownership, possessor or location of use, changes from that declared on the current registration, each registrant shall complete a new registration form within ten (10) days of the change.
  - (f) Each registrant, or his estate, who permanently discontinues the use of or transfers all of his radiation machines at an installation shall notify the Division in writing within 60 days of such action. In the case of a transfer, the notification shall include the name and address of the transferee.
  - (g) No person shall state or imply that the Division has approved any activity conducted under a registration.
- (2) Fee payment procedures:
- (a) Annual registration fee. Except as set out in parts 1-4 below, persons subject to registration who own, possess, inspect, assemble, install or service radiation machines as of any January 1, shall pay an annual registration fee. The fee invoice will be dated January 17. The fee shall be due March 17. The fee amount shall be as set out in the classification and fee schedule in paragraph (3) of this rule.
    1. For persons who receive ownership or possession of a radiation machine after any January 1, this fee shall be due initially as described below in subparagraph (b).
    2. For persons who begin providing inspection services under paragraph 1200-2-10-.27(4) after any January 1, this fee shall be due initially before review of the application to perform such services. Inspection services shall not be performed until the Division has approved the application.
    3. For persons who begin providing assembly/installation/servicing of radiation machines after any January 1, this fee shall be due initially before performance of such services.
    4. A staff inspector or staff assembler/installer/servicer is not subject to the annual registration fee. A staff inspector/assembler/installer/servicer is on the staff of and only provides services for a facility registered under these regulations and Tennessee Code Annotated (TCA) 68-202-101 et seq.
  - (b) Prorated annual registration fee. Persons subject to registration, who receive ownership or possession of a radiation machine after any January 1, may pay a prorated annual registration fee for the newly acquired machine for that calendar year.

1. Proration will be on a quarterly basis based on the classification and fee schedule below in paragraph (3).
2. The Division shall not prorate a fee unless written proof, acceptable to the Division, of the date the radiation machine was received accompanies the fee payment.
3. Prorated fees shall be due according to the following schedule:

For a radiation machine first received, or a certified registration first issued, during the months of:	a proration of	shall be due the following:
January, February, March . . . . .	100%.	July 17
April, May, June . . . . .	75%.	October 17
July, August, September . . . . .	50%.	January 17
October, November, December . . . . .	25%	April 17

4. The initial review fee required for an application for certified registration, described below in sub paragraph (c), shall not be prorated.
- (c) Initial review fee for certified registration application. Persons submitting an application for a certified registration shall pay an initial review fee. The fee amount shall be as set out in the classification and fee schedule below in paragraph (3). This fee is in addition to the annual registration fee also set out in paragraph (3), and is not refundable, except as specified in T.C.A. 68-203-101 *et seq.*
- (d) Reserved.
- (e) All fees due under this rule shall be payable to “Treasurer, State of Tennessee” at the Division address given in Rule 1200-2-4-.07.
- (f) A properly completed copy of the fee invoice shall accompany each payment.
- (g) Any failure to pay an invoiced amount by the date specified on the invoice, unless qualified by part 1200-2-10-.24(3)(d), shall be deemed a violation of T.C.A. §68-203-101 *et seq.*
1. If any part of any fee imposed under this rule is not paid within fifteen (15) days of the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto.
  2. Fees not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate from the due date to the date paid.
  3. Returned checks, returned for any reason including but not limited to insufficient funds or account closed, constitute failure to pay until the date the Division receives the funds.
  4. Returned checks are subject to an additional handling charge as established in Tennessee Department of Finance and Administration rule or policy.

5. Where a registrant has given timely notice of a change of address but an invoice is mailed to an incorrect mailing address, the Division will extend the due date until the Division resolves the situation.
  - (h) At the time of payment, a person possessing only Class II radiation machines may request specific times or list restricted hours for inspections by personnel of the Division under Rule 1200-2-10-.27. Specific times requested shall be during normal working hours.
- (3) Classification and fee schedule.
- (a) Effective {effective date of amendment}, fees shall be determined according to Schedule I of this paragraph:

**SCHEDULE I**

Class I	Dental Radiation Machines: All diagnostic equipment used exclusively for dental diagnostic procedures.	\$ 65.00 per tube
Class II	Priority Two Medical Radiation Machines: All medical diagnostic x-ray equipment, not in Class III, used exclusively for medical or veterinary diagnostic procedures.	\$ 150.00 per tube
Class III	Priority One Medical Radiation Machines: All diagnostic x-ray equipment used in radiologists' offices, orthopedic surgeons' offices or hospitals exclusively for medical diagnostic procedures.	\$ 200.00 per tube
Class IV	Therapy Medical Radiation Machines: All x-ray equipment with energies less than 0.9 MeV used for the purpose of medical or veterinary radiation therapy.	\$ 300.00 per tube
Class V	Priority Two Industrial and Educational Radiation Machines: Closed-beam analytical radiation machines, gauges or industrial radiation machines used in shielded room or cabinet radiography.	\$ 600.00 per tube
Class VI	Priority One Industrial and Educational Radiation Machines: All x-ray machines used for industrial radiography and all open-beam analytical x-ray machines not specifically included in Class I, II, III, IV, V or VII.	\$ 900.00 per tube
Class VII	Accelerators: All devices defined as accelerators as per "State Regulations for Protection Against Radiation."	\$ 1,500.00 annual fee plus an initial review fee of \$ 375.00 per maximum nominal rated MeV (initial review fee not to exceed \$ 150,000.00)

A person providing inspection services under paragraph 1200-2-10-.27(4), except as provided by part 1200-2-10-.24(2)(a)4, shall pay an annual registration fee of five hundred eighty dollars. \$ 600.00

A person providing assembly/installation/servicing, except as provided by part 1200-2-10-.24(2)(a)4, shall pay an annual registration fee of five hundred eighty dollars. \$ 600.00

(b) Reserved.

(c) Reserved.

The first sentence of paragraph (2) of Rule 1200-2-10-.31 Fees for Licenses is amended by deleting the words “(6) through (19) of this rule” and substituting the words “paragraph 1200-2-10-.31(10)”, so that as amended the sentence shall read:

The application filing fees shall be the same amount as the annual maintenance fees set forth in paragraph 1200-2-10-.31(10).

Paragraph (4) of Rule 1200-2-10-.31 Fees for Licenses is amended by deleting the paragraph in its entirety and substituting the following, so that as amended the paragraph shall read:

(4) Annual maintenance fees.

(a) Fee amounts for annual maintenance fees shall be as set out in the fee schedule in paragraph 1200-2-10-.31(10).

(b) Annual maintenance fees shall be due sixty days after the invoice date.

(c) Any failure to pay an invoiced amount by the date specified on the invoice shall be deemed a violation of T.C.A. §68-203-101 et seq.

1. If any part of any fee imposed under this rule is not paid within fifteen (15) days of the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto.

2. Fees not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate from the due date to the date paid.

3. Where a licensee has given timely notice of a change of address but an invoice is mailed to an incorrect mailing address, the Division will extend the due date until the Division resolves the situation.

(d) Annual maintenance fees are payable until the license is terminated by the Division.

1. Provided that the licensee has demonstrated to the satisfaction of the Division that all of the requirements concerning disposal of radioactive material and the decontamination of facilities are met, the termination of the license is administratively accomplished by using one of the following:

(i) As requested in writing by the licensee;

(ii) By the Division, for cause; or

(iii) In accordance with these regulations.

2. The failure to acquire radioactive material or the disposal of radioactive material without notifying the Division and requesting termination in writing does not constitute termination of a license.

Paragraphs (6) through (19) of Rule 1200–2–10–.31 Fees for Licenses are amended by deleting the paragraphs in their entirety and substituting the following, so that as amended the paragraphs shall read:

**1200–2–10–.31 FEES FOR LICENSES.**

- (6) All fees shall be payable to “Treasurer State of Tennessee” at the Division address given in Rule 1200–2–4–.07.
- (7) Where appropriate, a copy of the fee invoice shall accompany each payment.
- (8) Returned checks, returned for any reason including but not limited to insufficient funds or account closed, constitute failure to pay until the Division receives the funds.
- (9) Returned checks are subject to an additional handling charge as established in Tennessee Department of Finance and Administration rule or policy.
- (10) Fee Schedule.
  - (a) Effective {effective date of amendment}, fees shall be determined according to Schedule I of this paragraph:

**SCHEDULE I**

Category GL	Any person possessing radioactive material, under the terms of any general license issued under these regulations, in a form or device on which a test for leakage of radioactive material is required.	\$ 150.00
Category 1	A specific license for source material used exclusively for shielding radiation.	\$ 300.00
Category 2		\$ 600.00
2a	Reserved.	
2b	The application, use or possession of radioactive material as chromatography sources or gauges not requiring assignment to another category.	
2c	The application, use or possession of radioactive material for in vitro use only, total quantity not to exceed 200 microcuries.	
2d	Any person who packages or containerizes, loads transport vehicles or ships radioactive materials to a licensed disposal/processing facility in Tennessee.	

In addition to application and annual maintenance fees, there is also levied a fee of one and one-half cent per pound (\$0.015/lb) on all items contaminated or potentially contaminated with radioactive material or on low-level radioactive waste received at a processing, storage, disposal or refurbishing facility in Tennessee.



Notwithstanding the requirements of this paragraph 1200–2–10–.31(10) and Rule 1200–2–10–.32, licensees with multiple sites within the state will be levied only one fee if items are moved directly from one site to another.

The operator of the disposal/processing facility shall collect the fee of one and one-half cent per pound (\$0.015/lb). At the end of each calendar month, he shall remit the total of fees collected for the month to the Division of Radiological Health.

Category 3		\$ 900.00
3a	The application, use or possession of radioactive material, unless specific to a higher numbered category, by an academic institution, but does not include licenses authorizing all radioisotopes with atomic number 3 through 83.	
3b	The possession and use of radioactive material for civil defense activities.	
3c	The application, use or possession of radioactive material by a medical institution or physicians for use in radiopharmaceuticals for the diagnosis or therapy of humans.	
3d	Reserved.	
3e	The application, use or possession of radioactive material for the calibration for hire of radiation detection, monitoring and measuring instruments.	
3f	The performance for hire of leak tests on sealed sources of radioactive material.	
3g	The application, use or possession of radioactive material for demonstration or training purposes.	
3h	The application, use or possession of radioactive material for in vitro use only, total quantity exceeding 200 microcuries.	
3i	The use of sealed sources for soil and/or construction materials testing at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.	
3j	The use of radioactive material as chromatography sources at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.	
3k	The use of gauging and measuring devices at temporary job-sites by licensees with licensed authorization for no more than two (2) devices.	
Category 4		\$ 1,500.00
4a	The application, use or possession of radioactive material by a medical institution or physicians for interstitial, intracavitary or superficial treatment of humans using sealed sources, seeds or wires.	
4b	The application, use or possession of radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-contained irradiators).	
4c	The application, use or possession of radioactive material for analytical testing purposes.	
Category 5		\$ 2,100.00
5a	The use of radioactive material in research and development, manufacturing, testing, processing and assembling of products. This group includes the use of source material in the manufacture of items such as mantles, alloys, gases, liquids, metals, ceramics, glass or photographic products.	
5b	The use of radioactive material in a process that incorporates that material into a product in exempt concentrations.	

5c	The possession and use of radioactive material in curie quantities in a number of sources in gauges and gauging applications that require frequent changes and therefore frequent review of the program to ensure that the hazard potential does not exceed the scope of the radiation safety program.
5d	The use of a single radioactive material in the fabrication of sealed sources or ampoules.
5e	The receipt of prepackaged radioactive material waste from other persons by a nuclear waste handler for storage for less than three (3) months before transfer only to persons licensed to receive or dispose of the material.
5f	The use of sealed sources for soil and/or construction materials testing at temporary job-sites by licensees with licensed authorization for more than two (2) devices.
5g	The use of radioactive material as chromatography sources at temporary job-sites by licensees with licensed authorization for more than two (2) devices.
5h	The use of gauging and measuring devices at temporary job-sites by licensees with licensed authorization for more than two (2) devices.
Category 6	\$ 6,000.00
6a	The application, use or possession of radioactive material including source and/or special nuclear material in unsealed form in less than multicurie quantities for use in the fabrication of sealed sources without regard to amount of contained radioactivity.
6b	The manufacture of devices and/or sources that require in-depth review before approval by the Division. Each device and/or source reviewed shall be subject to this fee.
6c	The preparation, use or distribution of radiopharmaceuticals to locations other than the licensee's address for use in medical diagnosis or therapy.
6d	The use of radiography (the examination of the structure of materials by nondestructive methods using radioactive material) on the licensee's premises in a permanent shielded facility or temporary job-sites.
6e	The possession and use of radioactive material by academic and medical institutions under a license authorizing all radioisotopes with atomic numbers 3 through 83.
6f	The application, use or possession of radioactive material for well logging, well surveys or tracer studies.
6g	The application of radioactive material to soil, water, air, plants and animals, if the application involves an actual or potential release in or to unrestricted areas.
6h	The possession, use and distribution of radioactive material at one or more satellite facilities, or the possession and use of radioactive material at one or more satellite facilities, by medical institutions.
6i	The application, use or possession of radioactive material by a medical institution or physicians for research using humans and/or animals.
Category 7	\$ 3,000.00
7a	The application, use or possession of radioactive material by a medical institution or physicians for the treatment of humans with sealed sources contained in teletherapy devices.
7b	The application, use or possession of radioactive material by a veterinarian for the treatment of animals using sealed sources, seeds or wires.

Category 8	\$ 11,250.00
8a	The receipt of radioactive material waste from other persons by a nuclear waste handler, to package or repackage the material before transfer only to persons licensed to receive or dispose of the material.
8b	The commercial collection, laundering or dry cleaning of wearing apparel that is contaminated with radioactive material.
Category 9	\$ 15,000.00
9a	The possession of radioactive material or equipment contaminated or potentially contaminated with radioactive material as a result of operations involving the recovery of an element, compound or mixture from ores not subject to licensure because of the radioactive material content of the ore.
9b	Facilities that possess radioactive material as a result of operations (not directly involving radioactive decontamination activities) involving recovery of materials or other manufacturing processes (not directly manufacturing radioactive items or products).
Category 10	\$ 22,500.00
10a	Facilities storing radioactive material, contaminated equipment and/or potentially contaminated equipment for transfer to authorized recipients as a service to the nuclear industry.
10b	Possession and refurbishment of contaminated equipment and/or potentially contaminated equipment that has been used at nuclear power plants.
Category 11	\$ 30,000.00
11a	The collection, transfer, sorting and/or brokerage of radioactive material as sealed source, residue, product or as material in or on equipment; and/or  The decontamination of products and/or equipment containing radioactive material and/or contaminated with radioactive material; and/or  The possession, storage and incineration of radioactive material or items contaminated with radioactive materials.
11b	On site possession and storage of radioactive material and/or equipment contaminated with radioactive material as a result of operations involving the recovery of an element, compound or mixture from ores subject to licensure because of the radioactive material content of the ore or concentration of the radioactive material during the processing of the ore.
11c	Facilities involved in the manufacture of product lines containing radioactive material in the manufactured product.
11d	Possession of radioactive material for processing. This material may exist in ores, concentrates, compounds or metals.
11e	The possession of multicurie quantities of unsealed radioactive material either as waste or for further processing and/or conversion into specific marketable products.
11f	Operations involving the fabrication of sealed sources or manufacture of compounds for distribution to other specific or general licensees.
11g	The possession and use of radioactive material in a sealed source for irradiation of materials in which the source is exposed for irradiation purposes (non self-contained irradiators).

Category 12	The application for and/or operation of a low-level radioactive waste disposal facility._____	\$ 375,000.00
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The maximum length of reviewing time (the period of time when there are no outstanding unanswered questions) after receipt of a new application and the appropriate fee for a Category 12 specific license and the issuance of a license is 60 months.

Category 13	The application, use or possession of radioactive material for uses or procedures not specifically included in any other category.	At least \$ 150.00 not greater than \$ 375,000.00
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The fee shall be determined on a case-by-case basis. The determination shall be based on an analysis of the hazard, the scope of the difficulty encountered in the review process and the specifics of the activity following the categories established above.

(b) Reserved

(11) through (19) Reserved.

**Authority:** T.C.A. §68-202-101, et seq. and 4-5-201, et seq., and 68-203-101 et seq.

Subparagraph (5)(d) of Rule 1200-2-10-.32 Licensing of Shippers of Radioactive Material into or Within Tennessee is amended by adding the words "one and one-half cent per pound (\$0.015/lb)" before the word "fee" and by deleting the words "rule 1200-2-10-.31(8)(d)" and substituting the words "Category 2d in paragraph 1200-2-10-.31(10)", so that as amended the subparagraph shall read:

The owner or operator of a disposal/processing facility shall, along with the remittance of the one and one-half cent per pound (\$0.015/lb) fee collected under Category 2d in paragraph 1200-2-10-.31(10), submit a listing containing the name and address of each shipper and the volume and poundage from each shipper for the calendar month.

**OTHER INFORMATION**

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Barbara A. Davis at the Division of Radiological Health, Central Office, address below, prior to or following the public hearing. However, the Division must receive such written comments in its Central Office by 4:30 p.m. CST, November 28, 2000, in order to assure consideration.

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

Chattanooga Environmental Assistance Center  
 State Office Building  
 540 McCallie Avenue, Suite 550  
 Chattanooga, TN 37402-2013  
 (423) 634-5745 / 1-888-891-8332

Knoxville Environmental Assistance Center  
2700 Middlebrook Pike, Suite 220  
Knoxville, TN 37921-5602  
(865) 594-6035 / 1-888-891-8332

Memphis Environmental Assistance Center  
Perimeter Park  
2510 Mt Moriah Road, Suite E-645  
Memphis, TN 38115-1520  
(901) 368-7939 / 1-888-891-8332

Nashville Environmental Assistance Center  
711 R S Gass Boulevard  
Nashville, TN 37243  
(615) 687-7000 / 1-888-891-8332

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

Division of Radiological Health  
L & C Annex, Third Floor  
401 Church Street  
Nashville, TN 37243-1532.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-40)

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400**  
**DIVISION OF RADIOLOGICAL HEALTH**

There will be a hearing before the Tennessee Department of Environment and Conservation, Division of Radiological Health, to consider the promulgation of amendments pursuant to T.C.A. 68-202-101 *et seq.*, and 68-202-501 *et seq.* 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 17th Floor Conference Room of the L & C Tower located at 401 Church Street, Nashville, Tennessee at 2:30 p.m. (CST), on the 21st day of November, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Radiological Health 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 to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at the Division of Radiological Health; L & C Annex, Third Floor; 401 Church Street; Nashville, TN 37243-1532; (615) 532-0364.

For a copy of this notice of rulemaking hearing, contact: Barbara A. Davis; Division of Radiological Health, Central Office; L & C Annex, Third Floor; 401 Church Street; Nashville, TN 37243-1532, FAX 615-532-0364

**SUBSTANCE OF PROPOSED AMENDMENTS**

Subparagraphs (3)(d) and (e) of Rule 1200-2-10-.24 Registration are amended by deleting the subparagraphs in their entirety and substituting the following, so that as amended the subparagraphs shall read:

- (d) A registrant may qualify to pay a reduced registration fee equal to eighteen percent (18%) of that listed for the appropriate class as set out in the classification and fee schedule in this paragraph (3), subject to the following conditions:
  - 1. All tubes subject to registration are inspected in accordance with paragraph 1200-2-10-.27(3)(a).
  - 2. Each newly acquired tube subject to registration is inspected within six (6) months of ownership or possession.
  - 3. An individual who satisfies the requirements in paragraph 1200-2-10-.27(4) performs all inspections.
  - 4. Inspections found by the Division to be unsatisfactory under this subparagraph or under paragraph 1200-2-10-.27(4) shall not qualify for the 82 percent (82%) fee reduction.
- (e) A registrant wishing to qualify for the reduced registration fee provided for above in subparagraph (d) shall submit to the Division, at the address given in Rule 1200-2-4-.07:
  - 1. Copies of the appropriate State evaluation forms.
    - (i) For inspections performed through December 31, 2001, the registrant shall submit evaluation forms at the time of payment of the applicable fee.
    - (ii) For inspections performed on and after January 1, 2002, the registrant shall submit evaluation forms within 30 days after the inspection.

2. Copies of applicable service reports to document correction of any deficiencies noted.
  - (i) For inspections performed through December 31, 2001, the registrant shall submit documentation of correction at the time of payment of the applicable fee.
  - (ii) For inspections performed on and after January 1, 2002, the registrant shall submit documentation of correction within 30 days after the inspection.
3. For inspections performed on and after January 1, 2002, a signed "X-Ray Inspection Notification and Certification of Compliance" form within 30 days of the inspection.

**Authority:** *T.C.A. §68-202-101 et seq. and 4-5-201 et seq.*

Subparagraph (3)(d) of Rule 1200-2-10-.27 Inspections is amended by deleting the subparagraph and substituting the following, so that as amended the subparagraph shall read:

- (d) According to the same criteria and to the satisfaction of the Division and provided the appropriate Division forms are completed and submitted along with any documentation required by subparagraph 1200-2-10-.24(3)(e), and

Paragraphs (4) and (5) of Rule 1200-2-10-.27 Inspections are amended by deleting the paragraphs and substituting the following as paragraph (4), so that as amended the paragraph shall read:

- (4) The Division will accept as inspections for radiation machine registrants to pay a reduced registration fee as provided for in part 1200-2-10-.24(3)(d), inspections by individuals other than employees of the Division:
  - (i) Whose inspections are satisfactory to the Division;
  - (ii) Who meet one set of the following criteria;
  - (iii) Who are registered with the Division; and
  - (iv) Who are staff inspectors, or
  - (v) Who have paid an annual registration fee to the Division.

Formal Education or Certification	Plus	Experience
Bachelor's degree in a physical science or mathematics		Four years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed
Bachelor's degree in a physical science or a biological science with a physical science minor and one year of graduate work in health physics		Three years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed
Master's degree in health physics or radiological health		Two years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed
Doctor's degree in health physics or radiological health		One year of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed
Certification by the American Board of Health Physics or by the American Board of Radiology or be a Fellow, Canadian College of Physicists in Medicine		One year of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed
Two (2) notarized letters of reference from persons registered to provide inspections for reduction in fees and meeting any of the sets of criteria certifying to the individual's capabilities to perform the necessary inspections		Five years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed

**Authority:** T.C.A. §68-202-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

**OTHER INFORMATION**

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Barbara A. Davis at the Division of Radiological Health, Central Office, address below, prior to or following the public hearing. However, the Division must receive such written comments in its Central Office by 4:30 p.m. CST, November 28, 2000, in order to assure consideration.

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

Chattanooga Environmental Assistance Center  
 State Office Building  
 540 McCallie Avenue, Suite 550  
 Chattanooga, TN 37402-2013  
 (423) 634-5745 / 1-888-891-8332

Knoxville Environmental Assistance Center  
 2700 Middlebrook Pike, Suite 220  
 Knoxville, TN 37921-5602  
 (865) 594-6035 / 1-888-891-8332



Memphis Environmental Assistance Center  
Perimeter Park  
2510 Mt Moriah Road, Suite E-645  
Memphis, TN 38115-1520  
(901) 368-7939 / 1-888-891-8332

Nashville Environmental Assistance Center  
711 R S Gass Boulevard  
Nashville, TN 37243  
(615) 687-7000 / 1-888-891-8332

Copies are also available for review at the Division of Radiological Health, Central Office:  
Division of Radiological Health  
L & C Annex, Third Floor  
401 Church Street  
Nashville, TN 37243-1532.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-41)

**TENNESSEE DEPARTMENT OF HEALTH - 1200  
BOARD FOR LICENSING HEALTH CARE FACILITIES**

There will be a hearing before the Tennessee Department of Health to consider the promulgation of rules pursuant to T.C.A. §§ 68-11-202 et seq., and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administration Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Hearing Room on the ground floor of the Cordell Hull Building located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee 37247-0508 at 9:00 a.m. C.T. on the 21<sup>st</sup> day of November, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Health 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 to allow time for the Department of Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Health's ADA Coordinator at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee, Telephone 615-741-7586.

For a copy of this notice of rulemaking hearing, contact: Anita Van Tries, 425 5<sup>th</sup> Avenue North, Nashville, Tennessee 37247-0508, Telephone 615-741-7586.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-8-1  
STANDARDS FOR HOSPITALS**

**CHAPTER 1200-8-6  
STANDARDS FOR NURSING HOMES**

**CHAPTER 1200-8-10  
STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS**

**CHAPTER 1200-8-11  
STANDARDS FOR HOME FOR THE AGED**

**CHAPTER 1200-8-15  
STANDARDS FOR RESIDENTIAL HOSPICES**

**CHAPTER 1200-8-17  
ALCOHOL AND OTHER DRUGS OF ABUSE  
RESIDENTIAL TREATMENT FACILITIES**

**CHAPTER 1200-8-18  
ALCOHOL AND OTHER DRUGS OF ABUSE  
NON-RESIDENTIAL TREATMENT FACILITIES**

**CHAPTER 1200-8-19  
ALCOHOL AND OTHER DRUGS OF ABUSE  
DUI SCHOOL FACILITIES**

**CHAPTER 1200-8-20  
ALCOHOL AND OTHER DRUGS OF ABUSE  
PREVENTION PROGRAM FACILITIES**

**CHAPTER 1200-8-21  
ALCOHOL AND OTHER DRUGS OF ABUSE  
NON-RESIDENTIAL NARCOTIC TREATMENT FACILITIES**

**CHAPTER 1200-8-22  
ALCOHOL AND OTHER DRUGS OF ABUSE  
HALFWAY HOUSE TREATMENT FACILITIES**

**CHAPTER 1200-8-23  
ALCOHOL AND OTHER DRUGS OF ABUSE  
RESIDENTIAL DETOXIFICATION TREATMENT FACILITIES**

**CHAPTER 1200-8-24  
STANDARDS FOR BIRTHING CENTERS**

**CHAPTER 1200-8-25  
STANDARDS FOR ASSISTED-CARE LIVING FACILITIES**

**CHAPTER 1200-8-26**  
**STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES**

**CHAPTER 1200-8-27**  
**STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOSPICE SERVICES**

**CHAPTER 1200-8-28**  
**STANDARDS FOR HIV SUPPORTIVE LIVING FACILITIES**

**CHAPTER 1200-8-29**  
**STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT**

Chapters 1200-8-1 through 1200-8-29 are amended by deleting the appropriate paragraph under Records and Reports and adding a new paragraph as follow:

Unusual incidents shall be reported to the Department within five (5) days of the occurrence of the incident. The Board shall define, identify and establish guidelines for the reporting of an event deemed to be an unusual incident. The facility shall conduct and complete a thorough investigative analysis, which shall include any necessary corrective action, of the incident within forty (40) days of the occurrence of the incident. The incident report and the investigative analysis report shall be recorded in a format designed by the Department. The investigative analysis report shall remain in the facility. The Department shall have access to the investigative analysis report and any other requested hospital record as allowed in T.C.A. §§ 68-11-301 et. seq. The Department may copy any facility record unless otherwise prohibited by rule or statute. Access to the investigative analysis shall not be deemed a waiver of any privilege afforded to the facility. Failure to comply with this reporting request may result in disciplinary action against the facility before the Board.

**Authority:** T.C.A. §§4-5-202, 68-11-209, 68-11-210 and 68-11-213.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-49 through 09-66)

**DEPARTMENT OF HEALTH - 1200  
BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS**

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. 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 5<sup>th</sup> day of December, 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**

**TABLE OF CONTENTS**

1200-30-1-.18 Professional Peer Assistance

**1200-30-1-.18 PROFESSIONAL PEER ASSISTANCE.**

- (1) The Board has the prerogative to refer for assessment(s), and if needed, treatment, for the presenting problem(s) of any licensee or applicant voluntarily or involuntarily coming before the Board.
- (2) As an alternative to disciplinary action, or as part of a disciplinary action, the Board shall utilize the services of a professional assistance program, as approved by the Board, for situations regarding licensee substance abuse, chemical abuse, or lapses in professional and/or ethical judgements. Information regarding persons entering the program upon referral by this Board shall be confidential.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-136, 68-24-605, and 68-24-606.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of September, 2000. (09-11)

09-22

## **BOARD OF MEDICAL EXAMINERS - 0880**

There will be a hearing before the Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 53-11-301, 63-6-101 and 63-6-214. 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 Johnson Room on the Ground Floor of the Cordell Hull Building located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee at 9:00 a.m. (CST) on the 15<sup>th</sup> day of November, 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 Division's ADA Coordinator at the Division of Health Related Boards, 1st Floor Cordell Hull Building, 425 5th 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, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

### **SUBSTANCE OF PROPOSED RULE**

#### **AMENDMENTS**

Rule 0880-2-.14 Scope of Practice, is amended by adding new paragraph (8), so that as amended the new paragraph (8) shall read as follows:

(8) Prerequisites to Issuing Prescriptions or Dispensing Medications - In Person, Electronically, and Over the Internet

(a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and
2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

(b) A physician may prescribe or dispense drugs for a person not in compliance with subparagraph (a) in circumstances including, but not limited to, the following:

1. In admission orders for a newly hospitalized patient; and

2. For a patient of another physician for whom the prescriber is taking calls; and
  3. For continuation medications on a short-term basis for a new patient prior to the patient's first appointment; and
  4. For established patients who, based on sound medical practices, the physician feels does not require a new physical examination before issuing new prescriptions.
- (c) It shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual the physician has never met based solely on answers to a set of questions regardless of whether the prescription is issued directly to the person or electronically over the Internet or telephone lines.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of September, 2000. (09-22).

### **BOARD OF NURSING - 1000**

There will be a hearing before the Tennessee Board of Nursing to consider the promulgation of a new rule and repeal of a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207. 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 20<sup>th</sup> day of November, 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 5<sup>th</sup> Avenue North, 1<sup>st</sup> Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES****NEW RULE****TABLE OF CONTENTS**

1000-1-.16 Consumer Right-To-Know Requirements

1000-1-.16 Consumer Right-To-Know Requirements. This rule shall apply only to licensees that are Certified Registered Nurse Anesthetists and to licensees that are nurse practitioners regulated pursuant to Chapter 1000-4.

- (1) The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).
- (2) Criminal Conviction Reporting Requirements - For purposes of the "Health Care Consumer Right-To-Know-Act of 1998" the criminal convictions that must be reported are for those crimes listed in paragraph (2) of Rule 1000-1-.13.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-7-123, 63-7-207, 63-7-209, 63-51-101, et seq., Public Chapter 373 of the Public Acts of 1999, and Public Chapter 912 of the Public Acts of 2000.

**REPEAL**

Rule 1000-4-.05, Consumer Right-To-Know Requirements, is repealed.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-7-123, and 63-7-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of September, 2000. (09-18)

**BOARD OF OSTEOPATHIC EXAMINATION'S - 1050  
COUNCIL OF CERTIFIED PROFESSIONAL MIDWIFERY**

There will be a hearing before the Tennessee Board of Osteopathic Examination and its Council of Certified Professional Midwifery to consider the promulgation of new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 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. (CST) on the 29th day of November, 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 RULES**

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1050-5-.01 Definitions	1050-5-.05 Certification Renewal, Retirement, and Reactivation
1050-5-.02 Scope of Practice	1050-5-.06 Fees
1050-5-.03 Necessity of Certification	1050-5-.07 Certification Discipline
1050-5-.04 Certification Applications, Requirements, and Exemptions	

**1050-5-.01 DEFINITIONS.** As used in this chapter, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Antepartal - Occurring during pregnancy.
- (2) Board - The Board of Osteopathic Examination to whom the Council of Certified Professional Midwifery reports.
- (3) Consultation – The exchange of information and advice regarding the client condition and indicated treatment with a physician.
- (4) Council - The Council of Certified Professional Midwifery.
- (5) Certified Professional Midwife (CPM) - A person who has obtained national certification from the North American Registry of Midwives.
- (6) CPM-TN - Certified professional midwife in Tennessee. A CPM-TN must be certified to practice midwifery by the North American Registry of Midwives.
- (7) CPR - Cardiopulmonary resuscitation.
- (8) Department - The Tennessee Department of Health.
- (9) Intrapartal - Occurring during the process of giving birth.



- (10) Midwife - A person who is trained to give the necessary care and advice to women during pregnancy, labor, and the post-birth period, to conduct normal deliveries on his or her own responsibility and to care for the newly born infant. The midwife is able to recognize the warning signs of abnormal conditions requiring referral to and/or collaboration with a physician.
- (11) Midwifery - The practice of attending low-risk women during pregnancy, labor and the post-birth period with the informed consent of the mother.
- (12) NARM - The North American Registry of Midwives.
- (13) Physician - A person who is duly licensed in the State of Tennessee to practice medicine by the State Board of Medical Examiners or to practice osteopathy by the State Board of Osteopathic Examination.
- (14) Postpartal - Occurring subsequent to birth.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 of the Public Acts of 2000.*

**1050-5-.02 SCOPE OF PRACTICE.** The scope of midwifery practice shall include comprehensive care of the pregnant woman during the antepartal phase, intrapartal phase, and postpartal phase, and application of emergency care when necessary.

- (1) The Council adopts, as if fully set out herein, and as it may from time to time be amended, the current "Practice Guidelines" issued by the Tennessee Midwives Association. Information to acquire a copy may be obtained by contacting either of the following:
  - (a) Tennessee Midwives Association  
613 Shadycrest Lane  
Franklin, TN 37064  
Telephone: (615) 791-6645
  - (b) Tennessee Board of Osteopathic Examination's  
Council of Certified Professional Midwifery  
First Floor, Cordell Hull Building  
425 Fifth Avenue North  
Nashville, TN 37247-1010  
Telephone: (615) 532-3202 ext. 24384  
Telephone: (888) 310-4650 ext. 24384  
Fax: (615) 253-4484  
Internet: [www.state.tn.us/health](http://www.state.tn.us/health)
- (2) The CPM-TN may provide care for the low-risk client who is expected to have a normal pregnancy, labor, birth and postpartal phase in the setting of her choice. The CPM-TN shall form a collaborative care plan with a physician for all clients.
- (3) The CPM-TN shall ensure that the client has signed an informed consent form. This form shall include information to inform the client of the qualifications of the CPM-TN.
- (4) The CPM-TN may order routine antepartal laboratory analysis to be performed by a licensed laboratory.

- (5) The CPM-TN shall develop an emergency plan that shall be signed by the client and placed in the client chart at the initial visit. The emergency plan shall include documentation of the initial consultation with the physician previously referenced in paragraph (1) as stated above. The documentation shall also include referral and transfer plans for the patient in the event of an emergency. A copy of the plan shall be sent to the named physicians.
- (6) The CPM-TN shall determine the progress of labor and, when birth is imminent, shall be available until delivery is accomplished.
- (7) The CPM-TN shall remain with the postpartal mother during the postpartal period until the conditions of the mother and newborn are stabilized.
- (8) The CPM-TN shall instruct the parents regarding the requirements of T.C.A. § 68-5-202.
- (9) The CPM-TN shall instruct the parents regarding the requirement of T.C.A. § 68-5-401.
- (10) The CPM-TN shall maintain a birth certificate for each birth in accordance with the requirements of Tennessee Code Annotated, Title 68. A copy of the birth certificate shall be filed with the Department of Health.
- (11) The CPM-TN shall practice in compliance with the rules and regulations set forth in this chapter.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 of the Public Acts of 2000.*

#### **1050-5-.03 NECESSITY OF CERTIFICATION.**

- (1) Only persons who are certified by the Council may represent themselves as a certified professional midwife in Tennessee (CPM-TN) or hold themselves out to the public as being a CPM-TN by means of using a title on signs, mailboxes, address plates, letterheads, announcements, telephone listings, business cards, or other instruments of professional identification.
- (2) No person shall hold himself out to the public by a title or description of services incorporating the words “certified professional midwife in Tennessee” (CPM-TN) unless he/she is certified by the Council. Nothing in this rule shall prohibit a person from stating or using the educational degrees that he/she has obtained.
- (3) Certification as a CPM-TN is required to practice midwifery for monetary compensation in which service has been offered for a fee.
- (4) Nothing in this rule shall be construed to authorize the uncertified practice of midwifery.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 of the Public Acts of 2000.*

#### **1050-5-.04 CERTIFICATION APPLICATIONS, REQUIREMENTS, AND EXEMPTIONS.**

- (1) Applications
  - (a) Any individual who desires to practice as a certified professional midwife in Tennessee shall apply for certification to the Council on forms provided by the Council, and shall submit the fees required by rule 1050-5-.06.

- (b) It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
- (c) Application review and certification decisions shall be governed by rule 1050-2-.05.

(2) Requirements

- (a) An applicant shall have current certification from the North American Registry of Midwives. It is the applicant's responsibility to request verification of current NARM certification be submitted directly from NARM to the Council's administrative office.
- (b) An applicant shall have current certification in CPR, including infant or neonatal resuscitation. The applicant shall submit a notarized photocopy of current certification in CPR with his/her application for certification as a CPM-TN.
- (c) An applicant shall submit a clear and recognizable, recently taken, bust photograph which shows the full head, face forward from at least the top of the shoulders up.
- (d) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character from medical professionals on the signator's letterhead.
- (e) If an applicant has ever been authorized to practice as a professional midwife in any other state or country, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing agency which indicates the applicant either holds a current or active authorization to practice as a professional midwife and whether it is in good standing, or has held an authorization to practice as a professional midwife which is currently inactive and whether it was in good standing at the time it became inactive. It is the applicant's responsibility to request this information be submitted directly from each such licensing agency to the Council's administrative office.

(3) Exemptions

- (a) Certification as a CPM-TN is not required for certified nurse midwives who maintain their licensure as registered nurses pursuant to Tennessee Code Annotated, Title 63, Chapter 7.
- (b) Certification as a CPM-TN is not required for nurse midwives or certified midwives who have been certified by the American College of Nurse Midwives.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 of the Public Acts of 2000.*

**1050-5-.05 CERTIFICATION RENEWAL, RETIREMENT, AND REACTIVATION.** All Professional midwives certified by the Council must renew their certification to be able to continue in practice. Certification renewal is governed by the following:

- (1) The due date for renewal is the last day of the month in which a certificate holder's birth date falls pursuant to the Division of Health Related Board's biennial birth date renewal system.
- (2) To be eligible for certification renewal, a certificate holder must submit to the Council's administrative office on or before the due date for renewal all of the following:
  - (a) A completed application form.

- (b) Attestation of compliance with NARM continuing education requirements so that current NARM certification in good standing is maintained.
  - (c) Attestation of maintaining current CPR certification, as provided in rule 1050-5-.04.
  - (d) The biennial renewal fee as provided in rule 1050-5-.06.
  - (e) The biennial state regulatory fee as provided in rule 1050-5-.06.
- (3) Certificate holders who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their certificates processed for administrative revocation by the Council.
- (4) Unlike certificates revoked for cause as provided in rule .05 of this chapter, certificates administratively revoked pursuant to this rule may be reinstated upon meeting the following conditions:
- (a) Obtain from the Council's administrative office and fully complete the Council's Renewal/Reinstatement/Reactivation Application; and
  - (b) At the discretion of the Council, either appear before it or submit a notarized statement setting forth the good cause for failure to renew; and
  - (c) Submit the Council's Renewal/Reinstatement/Reactivation Application along with payment of all past due registration/renewal fees to the Council's administrative office; and
  - (d) Payment of the late renewal fee provided in rule 1050-4-.06; and
  - (e) If derogatory information or communication is received during the renewal process, if requested by the Council or its duly authorized representative, appear before the Council for an interview and/or be prepared to meet or accept other conditions or restrictions as the Council may deem necessary to protect the public.
  - (f) Any certificate holder who fails to renew certification prior to the expiration of the second (2<sup>nd</sup>) year after which renewal is due may be required to meet or accept other conditions or restrictions as the Council may deem necessary to protect the public.
- (5) Any certificate holder who receives notice of administrative revocation may, within sixty (60) days of receipt of the notice execute and file in the Council's administrative office an affidavit of retirement which will effectively inactivate the certificate as of the date such affidavit of retirement was received in the Council's administrative office.
- (6) Renewal issuance decisions pursuant to this rule may be made administratively or upon review by any Council member or the Council's designee.
- (7) Certification retirement
- (a) Certificate holders who wish to retain their certification but not actively practice as a professional midwife may avoid administrative revocation of certification and/or compliance with the certification renewal process by doing the following:
    - 1. Obtain from, complete and submit to the Council's administrative office an affidavit of retirement form.

2. Submit any documentation which may be required by the form to the Council's administrative office.
- (b) Upon successful application for retirement of certification with completion and receipt of all proper documentation to the Council's satisfaction, the Council shall register the Certificate as retired. Any person who has a retired certificate may not practice as a CPM-TN.
- (8) Reactivation - Any certificate holder whose certification has been retired may reenter active practice by doing the following:
  - (a) Submit a written request for a Renewal/Reinstatement/Reactivation Application to the Council's administrative office; and
  - (b) Complete and submit the Council's Renewal/Reinstatement/Reactivation Application along with payment of the certification renewal fee as provided in Rule 1050-5-.06 to the Council's administrative office. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Council may require payment of the reinstatement fee and past due renewal fees as provided in Rule 1050-5-.06; and
  - (c) Submit any documentation which may be required by the form to the Council's Administrative Office; and
  - (d) If requested, after review by the Council or its duly authorized representative, appear before either the Council for an interview regarding continued competence in the event of certification retirement in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process and/or be prepared to meet or accept other conditions or restrictions as the Council may deem necessary to protect the public.
  - (e) If certification retirement was in excess of five (5) years, the certificate holder may be required to successfully complete requirements the Council feels necessary to establish current levels of competency.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 of the Public Acts of 2000.

**1050-5-.06 FEES.**

(1) Application fee	\$ 500.00
(2) Biennial renewal fee	\$ 500.00
(3) Late renewal fee	\$ 15.00
(4) Reinstatement fee	\$ 50.00
(5) Duplicate certificate fee	\$ 5.00
(6) Biennial state regulatory fee	\$ 10.00

**Authority:** T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-9-101, and Public 576 of the Public Acts of 2000.

**1050-5-.07 CERTIFICATION DISCIPLINE.**

- (1) A CPM-TN may have his or her application for initial certification or reactivation of certification denied or otherwise disciplined for any of the grounds set forth in paragraph (2) of this rule. Such action may occur only after investigations by the Department of Health. Any action on the certification shall be made by the Council, subject to approval by the Board.
- (2) The Board has the power to deny initial certification, certification renewal or certification reactivation, or to otherwise discipline a certificate holder upon proof that the person:
  - (a) Is guilty of fraud or deceit in procuring or attempting to procure a certificate to practice midwifery;
  - (b) Is guilty of a crime;
  - (c) Is unfit or incompetent by reason of negligence, habits or other cause;
  - (d) Is addicted to alcohol or drugs to the degree of interfering with midwifery duties;
  - (e) Is mentally incompetent;
  - (f) Is guilty of unprofessional conduct; or
  - (g) Has violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto.
- (3) Upon a finding by the Council that any provision of Public Chapter 576 of the Public Acts of 2000 or the statutes and rules promulgated thereto, the Council may impose any of the following actions separately or in any combination deemed appropriate to the offense.
  - (a) Advisory Censure - This is a written action issued to the individual 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 (1) time and less severe violations. It is a formal disciplinary action.
  - (c) Probation - This is a formal disciplinary action which places an individual on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
  - (d) Certification Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the certification previously issued.
  - (e) Certification Revocation
    1. Administrative revocation - An administrative action taken pursuant to Rule 1050-4-.04 when a certificate holder fails to timely renew certification and all other options available to the certificate holder have been ignored. Certificates which are administratively revoked may be reinstated upon meeting the conditions stated in Rule 1050-4-.04.

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 certification previously issued. The Council, in its discretion, may allow reinstatement of a revoked certificate upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for certification from a person whose certificate was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Council's revocation order.
- (f) Conditions - These include any action deemed appropriate by the Council to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked certificate.
- (4) If the Council decides to consider discipline of a certificate holder, the Council shall notify the CPM-TN in writing of the reasons for such consideration. The notice shall set forth the time, place, and date of the meeting at which the Council shall take action. Such meeting shall not be set less than thirty (30) days from the mailing of the notice.
  - (5) Hearings
    - (a) Should the CPM-TN desire a hearing by the Council, the CPM-TN shall notify the chairperson of the Council in writing within fifteen (15) days after receipt of notice. The Council shall then set a hearing no less than fifteen (15) days and no more than forty-five (45) days and notify the CPM-TN in writing of findings and grounds for the decision. Said decision shall take effect immediately upon being reduced to writing and signed by the chairperson of the Council.
    - (b) All notification required by this section shall be in writing and shall be sent by certified, return receipt requested mail or by personal delivery.
    - (c) The following procedure shall govern the conduct of appeals hearings before the Council:
      1. The appellant shall have the right, but not be required to be represented by counsel.
      2. The Council shall arrange for a notary public or other officer empowered to administer oaths to be in attendance at every hearing, and all evidence offered shall be under oath.
      3. All proceedings of all hearings before the Council shall be recorded.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and Public Chapter 576 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 September, 2000. (09-21)

**BOARD OF REGISTRATION IN PODIATRY - 1155**

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. 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 19<sup>th</sup> day of December, 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 5<sup>th</sup> Avenue North, 1<sup>st</sup> Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES****AMENDMENTS**

Rule 1155-2-.01, Definitions, is amended by deleting paragraph (19) in its entirety and substituting instead the following language, so that as amended, the new paragraph(19) shall read:

- (19) Podiatrist - Means one who examines, diagnoses, or treats medically, mechanically, or surgically, the ailments of the human foot, ankle and soft tissue structures extending no higher than the distal tibial metaphyseal flair, including the use and prescribing of drugs and medications, but excluding the direct applications of general anesthesia by a podiatrist and the amputation of the foot. A podiatrist may perform Achilles tendon repair, subject to the provisions of T.C.A. § 63-3-101, but may not perform surgery on Pilon fractures or tibial fractures which do not enter the ankle joint.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, and Public Chapter 828 of the Public Acts of 2000.

Rule 1155-2-.02, Scope of Practice, is amended by adding the following language as new paragraph (3):

- (3) A licensed podiatrist may perform ankle surgery subject to the provisions of T.C.A. § 63-3-101. Those licensees intending to perform such ankle surgery shall maintain their proof of compliance with T.C.A. § 63-3-101 at their practice location, as it may be inspected by the Board or its authorized representative.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, and Public Chapter 828 of the Public Acts of 2000.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of September, 2000. (09-05)



## **TENNESSEE PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION - 1175**

There will be a hearing before the Tennessee Private Investigation and Polygraph Commission to consider the promulgation of rules, amendments to rules and repeals pursuant to T.C.A. §62-26-303. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-202, and will take place in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 A.M. on the 15th day of December, 2000.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance 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 department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, ADA Coordinator, Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243, at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Donna Hancock, Administrative Director, Private Investigation and Polygraph Commission, 500 James Robertson Parkway, 2<sup>nd</sup> Floor, Nashville, Tennessee 37243, telephone (615) 532-9160.

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

### **NEW RULES**

#### **TABLE OF CONTENTS**

1175-1-.17 Retired Licenses  
 1175-1-.18 Exceptions to Applicability  
 1175-2-.09 Reactivation of Retired Licenses

### **CHAPTER 1175-1 PRIVATE INVESTIGATION COMMISSION**

#### **1175-1-.17 RETIRED LICENSE**

A private investigator who has retired his/her license shall remain subject to the disciplinary provisions contained in T.C.A. §62-26-217 and shall be obligated to comply with the notice provisions contained in T.C.A. §62-26-213.

*Authority:* T.C.A. §§62-26-303 and 62-26-225.

#### **1175-1-.18 EXCEPTIONS TO APPLICABILITY**

- (1) For purposes of T.C.A. §62-26-223(b)(3)(B), the term "employee" shall be defined as an individual to whom wages are paid by the attorney or law firm and from whose wages Federal Income Tax and/or Federal Insurance Contributions Act monies are withheld by the attorney or law firm.
- (2) For purposes of T.C.A. §62-26-223(b)(3)(C):
  - (a) The term "training" shall be defined as:
    3. A baccalaureate or post-graduate degree, from a college or university accredited by a recognized regional or local accreditation committee, in the technical, scientific or social science field in which services are to be performed; or

- 4. Such other training as the Commission may deem acceptable.
- (b) The term “experience” shall be defined as having worked in the technical, scientific or social science field in which services are to be performed, other than as a litigation consultant, for a minimum of at least five (5) years.

**Authority:** T.C.A. §§62-26-303 and 62-26-225.

**CHAPTER 1175-2  
CONTINUING PROFESSIONAL EDUCATION**

**1175-2-.09 REACTIVATION OF RETIRED LICENSES**

A private investigator who wishes to reactivate a retired license pursuant to T.C.A. §62-26-225(e)(2) must first complete the continuing professional education requirements set forth in T.C.A. §62-26-225 for the calendar year in which the retiree wishes to reactivate.

**Authority:** T.C.A. §§62-26-303 and 62-26-225.

**AMENDMENTS**

**CHAPTER 1175-1  
PRIVATE INVESTIGATION COMMISSION**

Rule 1175-1-.03 Fingerprinting is amended by adding a new paragraph (3) which shall read:

- (3) In the event that the fingerprint card submitted by an applicant is rejected or otherwise unable to be processed by the Tennessee Bureau of Investigation (TBI) and/or the Federal Bureau of Investigation (FBI), the applicant shall submit a new fingerprint card together with any fee(s) charged by the TBI and/or FBI for processing fingerprints.

**Authority:** T.C.A. §§62-26-303 and 62-26-225.

Rule 1175-1-.11 License Fees is amended by adding a new paragraph (2) which shall read:

- (2) The fees for retirement and reactivation of a private investigators license are as follows:

Retirement of private investigators license.....	\$100.00
Reactivation of retired private investigators license.....	\$100.00

**Authority:** T.C.A. §§62-26-303, 62-26-225 and 62-26-208.

Rule 1175-1-.12 Renewal Fees is amended by adding a new paragraph (2) which shall read:

- (2) The fees for renewal of a retired private investigators license shall be as follows:

Retired licenses.....	\$25.00
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Penalty for renewal more than 30 days after the expiration date.....\$50.00

**Authority:** T.C.A. §§62-26-303, 62-26-225, and 62-26-211.

**CHAPTER 1175-4  
RULES OF PROFESSIONAL CONDUCT AND STANDARDS OF PRACTICE**

Rule 1175-4-.05 Conflicts of Interest is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) The licensee shall not accept compensation (financial or otherwise) from more than one party for services on or relating to the same investigation, set of circumstances, court case, or issues unless all interested parties consent in writing after full disclosure by the licensee.
- (2) The licensee shall avoid all known conflicts of interest with his/her employer or client, and shall promptly inform his/her employer or client of any business association, interest, or circumstance which could influence his/her judgment or the quality of his/her services. When such a conflict is unavoidable, the licensee shall forthwith disclose the circumstances to his/her employer or client.
- (3) The licensee shall take reasonable steps to implement a system for ascertaining the existence of potential conflicts of interests among his/her employers and/or clients.
- (4) A private investigations company shall be responsible for avoiding conflicts of interest between:
  - (a) The company and the clients of any private investigator(s) affiliated with the company;
  - (b) The clients of one private investigator affiliated with the company and the clients of any other private investigator(s) affiliated with the company.
- (5) No licensee or employee of a licensee shall contact or cause to be contacted any individual under investigation for the purpose of revealing confidential information to that individual. Any such contact with a subject being investigated, whether intentional or unintentional, shall be made a part of the investigative file of such case.

**Authority:** T.C.A. §62-26-303.

1175-4-.06 Misconduct is amended by adding a new paragraph (7) which shall read:

- (7) A Private Investigations Company shall be in responsible charge of any Private Investigators affiliated with such Company. In addition, a Private Investigations Company shall be subject to discipline for any violations of the Tennessee Private Investigators Licensing and Regulatory Act, and any rules promulgated thereunder, committed by its affiliated Private Investigator(s) if the Company knows or should have known about the violation(s) and fails to take preventative and/or remedial measures.

**Authority:** T.C.A. §62-26-303.

**CHAPTER 0780-5-4  
PRIVATE INVESTIGATORS**

**REPEALS**

Chapter 0780-5-4 Private Investigators is repealed.

*Authority:* T.C.A. §62-26-303.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-35)

**TENNESSEE REGULATORY AUTHORITY - 1220**

There will be a hearing before the Tennessee Regulatory Authority to consider the amendment of rules pursuant to Tennessee Code Annotated, Section 65-2-102. 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 Hearing Room of the Tennessee Regulatory Authority Building, 460 James Robertson Parkway, Nashville, Tennessee at 1:30 p.m. on the 16th day of November, 2000.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Regulatory Authority 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, to allow time for the agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505, and (615) 741-2904.

For a copy of this notice of rulemaking hearing, contact K. David Waddell, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN, and (615) 741-2904.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Chapter 1220-4-2 Regulations for telephone telecommunications service providers is amended by deleting Rules 1220-4-2 -.01 through .42 of the chapter in their entirety and substituting the following new sections:

## TABLE OF CONTENTS

1220-4-2-.01 Definitions	1220-4-2-.12 Customer Complaints
1220-4-2-.02 Scope of Regulations	1220-4-2-.13 Accuracy Requirements
1220-4-2-.03 Records and Reports	1220-4-2-.14 Payment for Services
1220-4-2-.04 Customer Refunds for Service Outages	1220-4-2-.15 Prepaid Calling Cards
1220-4-2-.05 Customer Deposits	1220-4-2-.16 Adequacy of Service
1220-4-2-.06 Disconnection of Local Service	1220-4-2-.17 Basic Obligations for ETCs
1220-4-2-.07 Disconnection of Local Service to a Reseller	1220-4-2-.18 Quality of Service Mechanisms
1220-4-2-.08 Privacy of Customer Information	1220-4-2-.19 Lifeline and Link-up
1220-4-2-.09 White Page Directories	1220-4-2-.20 Number Conservation
1220-4-2-.10 Emergency Service Provisioning	1220-4-2-.21 Toll Free County Wide Calling
1220-4-2-.11 Telephone Construction	1220-4-2-.22 Enforcement Procedures

### 1220-4-2-.01 DEFINITIONS

In the interpretation of these rules, the following definitions shall be used:

- (1) “Applicant” means a person requesting service through Lifeline or Link-up.
- (2) “Authority” or “TRA” means the Tennessee Regulatory Authority
- (3) “Basic Local Exchange Telephone Service” means telecommunications services as defined in Tenn. Code Ann. ‘ 65-5-208 (1).
- (4) “Busy season” means the period of the year during which the greatest volume of traffic is handled in the office.
- (5) “Carrier of last resort” means the required offering of ubiquitous basic local exchange services throughout a designated service area by an ETC qualified to receive federal and state universal service support using its own facilities or a combination of its own facilities and resale of another carrier’s services, including the services offered by another ETC.
- (6) “Customer” means any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., provided with telephone service by a telecommunications service provider.
- (7) “ETC” means eligible telecommunications carriers as defined in USCA Title 47, Section 214(e) and is certified by the Authority to receive state or federal universal service support.
- (8) “Exchange” means a unit established by a telecommunications service provider for the administration of telephone service in a specified area which usually embraces a city, town, or village and its environs. It consists of one or more central offices together with associated plant used in furnishing communication service in that area.
- (9) “Incumbent local exchange carrier” means a public utility offering and providing basic local exchange telephone service, as defined by TCA §65-5-208, pursuant to tariffs approved by the Tennessee Public Service Commission prior to June 6, 1995.
- (10) “Lifeline” means an income-tested telephone assistance program whereby qualified residents can obtain a discount on their basic monthly local telephone service.
- (11) “Link-up” means an income-tested telephone assistance program whereby qualified residents can obtain a discount on the one-time charge for the installation or the transferring of telephone service.

- (12) "Local Number Portability ("LNP")" means the ability of a customer to retain the same telephone number when changing local telecommunications service providers, as long as the customer stays within the same general geographic area.
- (13) "NANPA" means the North American Numbering Plan Administrator appointed by the FCC with the responsibility to oversee the administration of the telephone numbering system for North America.
- (14) "Peak-traffic hour" means the period of the day during which the greatest volume of traffic is handled in the telephone central office.
- (15) "QSM" means quality service mechanisms designed to penalize ETCs for repeatedly providing poor quality telephone service by monetarily compensating the appropriate customer.
- (16) "Rate Center" means a geographic location used by telecommunications carriers to establish the point to point mileage necessary for accurate and consistent billing for both local and toll calls.
- (17) "Reseller" means a Telecommunications Service Provider which purchases tariffed network services from a facility-based carrier to provide local and/or long distance service to end users.
- (18) "Sequential Number Assignment" means the assignment of telephone numbers within one 1,000 block prior to assigning telephone numbers from another unused 1,000 block of numbers.
- (19) "Service area" means the franchise area where an incumbent local exchange carrier provides basic local exchange service.
- (20) "Soft dialtone" means local service limited to access to emergency 911 service.
- (21) "Tariff" means the entire body of rates, tolls, charges, classifications and rules, adopted and filed with the Authority by a telecommunications service provider.
- (22) "Telecommunications Service Provider" means any provider of local exchange service as defined in Tenn. Code Ann. §65-4-101(c) and includes, but is not limited to, incumbent local exchange carriers ("ILEC"), competitive local exchange carriers ("CLEC") and resellers.
- (23) "Telephone Assistance Program" refers to Lifeline and Link-up.
- (24) "Trouble Report" means any oral or written report from a subscriber or user of telephone service relating to a physical defect or to difficulty or dissatisfaction with the operations of telephone facilities. One report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. Also, a separate report shall be counted for each telephone reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.
- (25) "Uncontaminated 1,000 Number Blocks" means a clean block of 1,000 numbers from which no individual telephone numbers have been assigned.
- (26) "Underlying carrier" means the telecommunications service provider supplying the tariffed services to a reseller for the provisioning of basic or long distance service.

**Authority:** T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.02 SCOPE OF REGULATIONS**

The purpose of this Chapter is to establish minimum quality of service standards and general regulations for all telecommunications service providers providing telecommunications service, as defined in this Chapter. The regulations are designed to ensure that Tennesseans continue to have access to quality telephone services in an emerging competitive telecommunications environment. This Chapter attempts to balance our state's policy of pro-competition in the telecommunications sector with the service quality expectations of our citizens as well as privacy concerns.

*Authority:* T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.03 RECORDS AND REPORTS****(1) Location of Records.**

Unless otherwise authorized by the Authority, all records of telecommunications service providers required by this Chapter or any other Authority rule shall be kept within the State or shall be made available to the Authority or its authorized representative upon request at no cost. If out-of-state travel is required by the Authority to view such records, the telecommunications service provider shall reimburse the Authority for reasonable travel expenses.

**(2) Retention of Records**

Telecommunications service providers shall maintain sufficient records necessary to verify and substantiate all requirements of this Chapter. These records include, but are not limited to, trouble reports, service orders, itemized customer billing records, customer deposits and customer complaints. All records required by this Chapter shall be retained for a period of two (2) years unless otherwise ordered by the Authority.

**(3) Out-of-Service Report**

(a) Telecommunications service providers are required to notify the Authority by the methods listed below regarding disruptions of service when greater than 1000 customers lose service for greater than four (4) hours.

1. Contact the Authority within two (2) hours of the service disruption or if during non-work hours, at the beginning of the succeeding workday and provide the location of the disruption, number of customers affected, and estimated restoral time.
2. Provide a written report within thirty (30) days of the incident to the Authority detailing the disruption along with actions the Telecommunications Service Provider has or shall take to prevent a similar disruption from occurring again.

**(4) Tariffs**

(a) Telecommunications service providers shall file with the Authority tariffs that set forth the conditions and circumstances under which services will be provided as prescribed in Chapter 1220-4-1.

(b) Telecommunications service providers shall make available a copy of its tariffs available for public inspection. Public inspection shall also include, but not limited to, having a copy of the tariffs available on the Internet.

(5) Exchange Maps

ETCs shall file with the Authority an exchange area map for each of its exchanges within the state clearly showing the boundary lines sufficient in detail to reasonably permit locating the exchange service area in the field.

(6) Wireline Reports

Each Telecommunications Service Provider shall provide to the Authority a summary of its wireline activity within the State on the first working day of each month in a format established by the Authority. This information shall allow the Authority to monitor the evolution of local competition within Tennessee.

(7) Telephone Number Utilization Reports

Each Telecommunications Service Provider shall provide telephone number utilization data to the Authority on the forms provided by the Authority, as authorized by the Federal Communications Commission.

(8) Service Reports

Each Telecommunications Service Provider shall furnish to the Authority at such time and in such form the results of any tests, summaries or records or any other information as the Authority may require.

(9) Adequacy of Service Reports

Each ETC shall submit to the Authority quarterly reports in a format established by the Authority that will allow the Authority to determine how well it is complying with the adequacy of service standards found in 1220-4-2-.17. The reports shall be itemized by month by local exchanges. The Authority may conduct periodic audits or require the ETCs to hire an independent firm to verify accuracy of service standard reporting.

(10) Interruption of Service Reports

Each Telecommunications Service Provider shall maintain an accurate record of trouble reports made by its customers. This record shall include such information as the customer name, and the time, date and nature of the trouble along with the action taken by the Telecommunications Service Provider to clear the trouble or satisfy the complaint. This record shall be available to the Authority or its authorized representative upon request.

(11) Miscellaneous Reports

Telecommunications Service providers shall provide any other report ordered by the Authority or requested by the Staff through the Executive Secretary's office.

**Authority:** T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.



**1220-4-2-.04 CUSTOMER REFUNDS FOR SERVICE OUTAGES**

In the event the customer's local service is interrupted by other than the negligent or willful act of the customer or by an act of nature or civil disturbance and it remains out for 24 hours after being reported, telecommunications service providers shall automatically credit, on the following month's bill, the customer's account \$5.00 per day until the service is restored, unless a more liberal credit is allowed under the Telecommunications Service Provider's tariffs. The credit in any one month shall not exceed \$50.00.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.05 CUSTOMER DEPOSITS**

- (1) No security deposit shall be required as a condition for service other than as provided in Telecommunications Service Provider tariffs on file with the Authority. Deposits shall be calculated on the amount of security needed to ensure payment of an average of two (2) months local service charges, if the customer agrees to subscribe to a toll blocking service.
- (2) Deposits, plus interest, shall either be refunded to the customer or credited to the customer's outstanding bill if the customer has established a satisfactory payment history or when service is terminated. A satisfactory payment history is where the customer has paid their telephone bill on time for 11 out of 12 months and has not had their service disconnected for non-payment or made payment with a check with insufficient funds.
- (3) Deposits shall accrue at a simple interest rate of 6% annually.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.06 DISCONNECTION OF LOCAL SERVICE**

- (1) Local service may be refused or discontinued for any of the reasons listed below:
  - (a) For non-payment of the local service portion, including regulated optional services provided by the customer's telecommunications service provider, of the telephone bill. Disconnection for this cause requires a ten (10) day prior written notice to the customer except in extreme cases as identified in 1220-4-2-.06 (1) (b) and (e).
  - (b) Customer use of equipment in such manner as to adversely affect the Telecommunications Service Provider's ability to provide service to other customers.
  - (c) Customer violation of any state or municipal law, ordinance or regulation pertaining to telephone services.
  - (d) Failure to provide the Telecommunications Service Provider with reasonable access to its equipment.
  - (e) Unauthorized or fraudulent use of telecommunications service.
- (2) The following shall not be grounds for the disconnection or denial of local telephone service.

- (a) Non-payment of toll service or any unregulated charges, such as yellow page advertising, telephone equipment, Internet service and 900 pay-per-call services, appearing on the customer's telephone bill.
  - (b) Delinquency in payment of a previous bill by a present occupant who was delinquent at another address and subsequently joined the household of a customer in good standing.
  - (c) Failure to pay the bill of another customer as guarantor thereof.
  - (d) Failure to pay for business service at a different location and different telephone number shall not constitute sufficient grounds to disconnect or refuse residential service.
- (3) Disconnection of local service shall adhere to the following procedures:
- (a) No local service shall be disconnected on a day the telecommunications service provider's business office is closed or on a day preceding a day the business office is closed.
  - (b) Disconnection of local service for non-payment of services as specified in 1220-4-2-.06(1) shall only occur after the affected customer has received a ten (10) day written notice of the pending disconnection, unless the customer is receiving Lifeline assistance. Lifeline customers shall receive a written notice of 15 days prior to disconnection.
  - (c) Disconnection of local service shall only occur during the hours the telecommunications service provider has personnel available to accept payment and reconnect service.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.07 DISCONNECTION OF SERVICE TO A RESELLER BY AN UNDERLYING CARRIER**

- (1) The following steps shall be taken when an underlying carrier denies service to a local or long distance reseller:
- (a) The underlying carrier shall provide no less than a thirty (30) days written notice to the reseller that service will be terminated on a date certain if actions are not taken by a date certain to rectify any of the conditions for disconnection found in 1220-4-2-.06 (1).
  - (b) The underlying carrier shall provide to the Authority a five (5) day notice of the pending disconnection of the reseller along with the reason(s) for the action.
  - (c) It is the responsibility of each reseller to notify its customers either in writing or by voice communications no less than ten (10) days prior of the pending disconnection of its service and advise its customers of their need to select another service provider.
  - (d) The reseller shall refund to its customers any credits due as a result of the disconnection of service within thirty (30) days of termination of the service.
  - (e) The underlying carrier shall provide a soft dialtone to the customers of the reseller upon disconnection of the reseller's service until said customer selects another local provider.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.08 PRIVACY OF CUSTOMER INFORMATION**

- (1) In recognition of customer privacy, telecommunications service providers are prohibited from disclosing information about the customer such as name, address, calling habits or any other such information to any other person or entity without the prior approval of the customer, unless otherwise ordered by the Authority.
- (2) Telecommunications service providers are required to exclude, without charge, the customer's name, address and telephone number and any other such personal information from its directory and directory information service when requested by the customer.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.09 DIRECTORIES (WHITE PAGES)**

- (1) Telephone directories shall be published annually and shall contain at a minimum the name, address and telephone number of all customers, except those customers who have informed the Telecommunications Service Provider to not list their information.
- (2) All telecommunications service providers shall provide free of charge to its customers a white page telephone directory encompassing the local calling area. Directories for areas outside the local calling area shall be provided to the customer for a reasonable cost.
- (3) In the event of a Telecommunications Service Provider listing error or the omission of a customer listing, the Telecommunications Service Provider shall provide an intercept service along with directory assistance for all calls made to the omitted number, upon the request of the customer, for up to one (1) year at no charge or until the publishing of a new White Page Directory.
- (4) The Authority's toll-free telephone number and Internet address shall be listed on the inside cover of the directory. Telecommunications Service Providers shall not charge the Authority for the listing of the above information.
- (5) Telecommunications service providers shall provide the Authority, without charge, at least one (1) copy of its directories at the time of publication.
- (6) The directory shall contain such instructions concerning placing local and long distance calls, calls to repair, billing questions as well as information services, and the mailing address of the telecommunications service provider.
- (7) The area included in the directory along with the month and year of the issuance of directory shall appear on the cover of the directory. Information pertaining to emergency calls such as for the police and fire department shall appear conspicuously in the front section of the directory.
- (8) Whenever any customer's telephone number is changed after a directory is published, the telecommunications service provider shall intercept all calls to the former number for a reasonable period of time and give the calling party the new number unless instructed otherwise by the customer with the new number.
- (9) Telecommunications service providers publishing White Page Directories must provide the opportunity to competitive local exchange carriers offering service within the calling scope of a directory to contract for the appear-

ance of the competitive local service providers name and logo on the cover of such directories under the same terms and conditions as the telephone service provider provides to itself.

**Authority:** T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.10 EMERGENCY SERVICE PROVISIONING**

- (1) All telecommunications service providers shall take the appropriate measures to meet emergency situations including but not limited to electricity failure due to weather conditions and sudden and prolonged increases in network traffic.
- (2) Within 180 days of the effective date of this Chapter all telecommunications service providers are required to meet the following objectives:
  - (a) Central offices with installed emergency power generators will have a minimum of three (3) hours of battery capacity to handle the busy season, peak-traffic hours.
  - (b) Central offices without emergency power generators on site will have a minimum of five (5) hours battery capacity to handle the busy season, peak-traffic hours. These offices must have ready access to portable power generators that can be connected prior to battery capacity exhaust.
- (3) In periods of prolonged and massive service outages, telecommunications service providers have the authority to restrict local service to essential service providers such as the police and emergency service providers.

**Authority:** T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.11 TELEPHONE CONSTRUCTION**

- (1) After the construction of plant by either the Telecommunications Service Provider or its contractors, it is the duty of each Telecommunications Service Provider to restore the property where the construction took place to as near the condition in which it existed prior to construction as possible within a reasonable period of time.
- (2) It is the duty of telecommunications service providers to comply with Tenn. Code Ann. §65-31-102 et seq. which includes, but is not limited to, contacting Tennessee One Call for the purpose of locating any underground utilities that may be damaged by proposed construction prior to installing facilities.
- (3) It is the duty of telecommunications service providers to comply with all local, state and federal construction standards and codes.

**Authority:** T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.12 CUSTOMER COMPLAINTS**

- (1) Each telecommunications service provider shall make a full and prompt investigation of customer complaints made either directly to it or through the Authority
- (2) Telecommunications service providers shall within ten (10) working days, after receipt of a complaint forwarded by the Authority, file a written reply with the Authority. This reply shall at a minimum state the Telecommunications Service Provider's position regarding the complaint and actions taken to resolve the dispute.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.13 ACCURACY REQUIREMENTS**

All meters and/or recording devices used by telecommunications service providers to prepare customer's bills shall be in proper working order and shall render accurate readings. Telecommunications service providers shall retain sufficient records to substantiate to the customer or the Authority compliance with this section.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.14 PAYMENT FOR SERVICES**

- (1) Telecommunications service providers shall provide, upon request, a deferred payment plan that will allow a customer to make payment by installments when such customer is unable to pay the amount due for service. The deferred payment plan may require the customer to maintain his/her account current and make equal payments that will payoff the outstanding balance within an agreed period time that should not exceed six (6) months, unless circumstances warrant additional time.
- (2) Each telecommunications service provider shall provide a variety of bill payment options to its customers including payment by check, money order and credit card. The Telecommunications Service Provider shall assess no additional fee to the customer for utilizing bill payment options.
- (3) Any partial payment of a bill by a customer shall first go toward the basic local service charges.
- (4) Telecommunications service providers under or over billing shall recover from or refund to the customer no more than two (2) years for previous service charges.
- (5) Each telecommunications service provider shall allow its customers no less than twenty (20) days from the date of the bill to pay the balance before such bills are considered delinquent.
- (6) No less than ten (10) days prior to disconnection of local service for non-payment telecommunications service providers shall notify the customer in writing that their bill is delinquent, as defined in 1220-4-2-.14(5), and subject to be disconnected by a date certain.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.15 PREPAID CALLING CARDS**

- (1) All prepaid calling cards shall provide adequate disclosure of the value of the card in either dollars or minutes. Such value shall be inclusive of any and all associated cost incurred with the purchase of the card. This information shall be displayed on the card or the package in a prominent and conspicuous manner.
- (2) All prepaid calling cards shall list the name, address and telephone number of the Telecommunications Service Provider providing the prepaid card. A live operator shall answer the telephone number listed at least eight (8) hours a day, five (5) days a week.
- (3) Under no circumstances shall the customer receive less value than that disclosed.
- (4) If a card has a specific expiration date, such date shall be printed on the card in a prominent and conspicuous manner.
- (5) Telecommunications service providers providing prepaid calling cards in the State shall respond to the Authority in writing within ten (10) working days of the receipt of consumer complaints.
- (6) All prepaid cards shall provide all information relative to usage sensitive per minute rates and all other charges. This information shall be displayed on the card or the package in a prominent manner.

*Authority:* T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.16 ADEQUACY OF SERVICE**

Each ETC shall employ adequate engineering and administrative procedures and maintain the necessary network facilities to ensure adequate service is being provided to its customers.

*Authority:* T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### **1220-4-2-.17 BASIC OBLIGATIONS FOR ETCS**

- (1) Each ETC shall provide an adequate level of service to all of its customers. Service adequacy shall include the following requirements:
  - (a) Access lines providing voice grade basic service shall be capable of carrying data speeds effectively not less than 28.8 kilobits per second.
  - (b) Lifeline and Link-up telephone assistance programs shall be tariffed with the Authority and provided to eligible customers in accordance with 1220-4-2-.19.

- (c) No less than 98% of primary service orders within an exchange shall be completed within three (3) working days, as measured on a monthly basis where construction is not required. Failure to meet this standard for two (2) consecutive months is deemed a violation of this Chapter.
- (d) No less than 90% of primary service orders within an exchange shall be completed within twenty (20) working days where construction is required as measured on a monthly basis. In the instance of any order for primary service where construction is required that cannot be completed within twenty (20) days, the ETC shall notify the Consumer Service Division in writing of the delay in providing primary service and the estimated date of providing service and any other information requested by Authority. Failure to meet this standard for two (2) consecutive months within an exchange is deemed a violation of this Chapter.
- (e) The ETC shall fulfill no less than 95% of its commitments to provide primary service on a date certain within an exchange as measured on a monthly basis. Failure to meet this standard in two (2) consecutive months is deemed a violation of this Chapter.
- (f) No more than four (4) trouble reports per 100 access lines per exchange in those exchanges that serve 5,000 or more access lines as measured on a monthly basis. Failure to meet this standard in two (2) consecutive months is deemed a violation of this Chapter.
- (g) No more than 5 trouble reports per 100 access lines per exchange in those exchanges that serve less than 5,000 access lines as measured on a monthly basis. Failure to meet this standard in two (2) consecutive months is deemed a violation of this Chapter.
- (h) No less than 95% of out of service trouble reports as measured on a monthly basis by exchange shall be restored within 24 hours. Failure to meet this standard in two (2) consecutive months is deemed a violation of this Chapter.
- (i) No more than 5% of out-of-service trouble reports as measured on a monthly basis by exchange shall be repeat trouble reports. Failure to meet this standard in two (2) consecutive months is deemed a violation of this Chapter.
- (j) Complete 98% of all calls during the average busy season, peak-traffic hours as measured on a statewide level without failure. Failure to meet this standard in two (2) consecutive months is deemed a violation of this Chapter.
- (k) A dial tone shall be provided within three (3) seconds on 99% of calls within each exchange.
- (l) Provide sufficient facilities to accommodate realistic forecasted growth projections in access lines within each exchange.
- (m) Payment centers shall be provided in convenient locations where customers can physically pay for telephone service charges.
- (n) Provide adequate means whereby its customers can contact repair service at all hours.
- (o) No less than ninety (90%) percent of all calls to the ETC directed to intercept, directory assistance, business offices and repair service shall be answered, as described below, within thirty (30) seconds after the last digit is dialed by the caller.

1. Notwithstanding (l) above, when a ETC utilizes an automated interactive answering system (hereafter referred to as “system”), at least ninety-five (95%) percent of the calls shall be answered within 15 seconds after the last digit is dialed. The initial recorded message to the customer shall only identify the Telecommunications Service Provider and the general options available to the customer. The option of transferring to a live attendant shall be included in the initial message.
  2. For customers electing the option of transferring to a live attendant, at least ninety-five (95%) percent of all such calls shall be transferred by the system to a live attendant prepared to give immediate assistance within fifty-five (55) seconds after the last digit of the telephone number listed in the directory for the ETCs’ service is dialed.
  3. At any time during the automated call, the customer shall be transferred to live assistance if the customer fails to interact with the system for a time period of ten (10) seconds following any prompt.
- (2) Carrier of last resort
- (a) Incumbent local exchange carriers designated by the Authority with ETC status have carrier of last resort obligations within their service area existing prior to June 6, 1995. Relinquishment of carrier of last resort obligations requires the approval of the Authority after considerations of how such relinquishment may affect the provisioning of universal service.

*Authority:* T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

#### 1220-4-2-.18

#### QUALITY OF SERVICE MECHANISMS (QSMS) FOR ETCs

- (1) Scope of Quality Service Mechanisms
  - (a) The Authority recognizes the importance of quality telephone service to the economic well being of Tennessee. Customer expectations for quality telephone service must not be compromised as the State moves toward a more competitive environment for local telephone service. To maintain quality telephone service for all consumers, the Authority has designed Quality of Service Mechanisms (“QSMS”). QSMS are also designed for ETCs to compensate customers for failing to obtain quality services within a reasonable timeframe. QSMS shall be automatically invoked by the ETC within the exchange where the ETC violates any of the provisions of Rule Chapter 1220-4-2-.17 (1) (c)(d)(f)(g) and (h) during four (4) months within a calendar year. The ETC shall notify the Authority in writing ten (10) business days prior to invoking the QSMS.
  - (b) QSMS shall not be applicable for any exchange for any month in which there is a declaration of a natural disaster or state of emergency issued by a federal, state or local authorities. The ETC shall not recover the cost of QSMS from its ratepayers. QSMS are not intended to limit ETCs from providing higher levels of compensation to their customers for failure to provide timely and quality service, but rather establish a floor of minimum compensation to their customers for providing an inadequate level of service.
- (2) Installation of Primary Service Orders



- (a) An ETC shall waive one-half (½) of the cost of installation of primary service orders within the exchange if the service is not installed within three (3) working days.
- (b) An ETC shall waive 100% of the cost of installing primary service if the service order is not completed within five (5) business days.
- (c) An ETC shall credit the affected customer an amount equal to \$5.00 per day for every day over five (5) working days the customer's primary service order is not worked up to a maximum of forty (40) days or \$200.
- (d) If the Authority finds that an ETC is knowingly not accepting orders for primary service within its franchise area, the ETC may have its state universal service support subsidies withheld for the affected exchange until orders are accepted. Any subsidy withheld will be submitted to the ETC once compliance with this Chapter is verified.

(3) Customer Trouble Reports

If an ETC violates 1220-4-2-.17 (f) or (g) for four (4) months within a calendar year within an exchange, the ETC shall credit \$5.00 per trouble report to each customer that reported trouble within the four (4) month applicable time period. The credit, which will be applied to the customer's telephone account, will only apply to existing customers.

(4) Out-of-Service Clearing Time

- (a) If an ETC fails to achieve the 90% clearing time for out of service reports for four (4) months within a calendar year within an exchange, the ETC will take the following actions:
  - 1. If a customer's service trouble is not cleared within 72 hours from the time the customer first reported the trouble to the ETC, the ETC shall provide the customer a credit equal to the full monthly charge for that customer's basic local service.
  - 2. If the customer's service trouble is not cleared within 96 hours from the time the trouble was first reported to the ETC, the ETC shall credit the customer's telephone account \$5.00 per day for each day the service is not working up to 40 days or \$200.

- (5) The ETC that has triggered QSMs shall submit to the Authority a monthly summary of information provided the number of customers within an exchange receiving the credit or any other information as required by the Authority.
- (6) The remedial actions outlined in this section shall remain in effect until the ETC provides service within the service parameters within the particular exchange for three (3) consecutive months.

**Authority:** T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.19 LIFELINE AND LINK-UP**

All Telecommunications Service Providers shall offer Lifeline and Link-up in accordance with the conditions listed below.

(1) Eligibility Requirements

- (a) A Tennessee resident is eligible for Lifeline and Link-up if the person's total household income is equal to or less than 125 percent (125%) of the Federal Poverty Level Guideline or if he/she qualifies to receive any one of the following public assistance benefits:
1. Food stamps;
  2. Medicaid (not TennCare);
  3. Supplemental Security Income (SSI);
  4. Temporary Assistance to Needy Families (TANF);
  5. Low-income Home Energy Assistance Program (LIHEAP);
  6. Federal Public Housing Support; and
  7. Any other program or service certified by the Authority to assist low-income citizens.

(2) Enrollment Procedures

- (a) Telecommunications service providers providing Lifeline and Link-up shall accept and act on requests from applicants to provide the Telephone Assistance Programs in a timely manner.
- (b) Telecommunications service providers shall take reasonable steps to verify that an applicant qualifies for at least one of the qualifications listed in 1220-4-2-.19 (1).
- (c) An applicant determined eligible for Link-up is automatically eligible to receive Lifeline and shall be notified as such by the telecommunications service providers providing the services.
- (d) Disputes between the telecommunications service providers and applicants regarding whether an applicant meets the qualification criteria shall be referred to the Authority for resolution.

(3) Semi-Annual Verification Procedures

- (a) A Telecommunications Service Provider providing Lifeline and Link-up shall verify during the months of January and July through the Tennessee Department of Human Services that its customers utilizing these telephone assistance programs continue to meet the qualification criteria embodied in this Rule Chapter.

(4) Notification Procedures for Discontinuing Lifeline

- (a) A Telecommunications Service Provider shall notify recipients of Lifeline during December and June of each year that in order to continue qualifying under the Federal Poverty Level Guidelines that supplemental information, as determined by the Authority, is needed to continue their eligibility for the telephone assistance. Failure to provide sufficient information within a reasonable period of time shall be grounds to terminate the Lifeline discount according to the condition below.

1. A Telecommunications Service Provider shall provide Lifeline customers 60 days notice that they no longer meet the qualification criteria for the discounted service. Such notice shall be in written form and shall disclose appeal rights for the decision to terminate the Lifeline discount through the Authority.
- (5) Lifeline Support Credits and Allowable Charges
- (a) Telecommunications service providers offering Lifeline and Link-up shall provide the maximum allowable discount as authorized by the FCC with the appropriate, if any, state matching credits.
  - (b) Lifeline credits shall not exceed basic local exchange telephone service charges.
  - (c) Lifeline recipients shall not be assessed a fee for local number portability by telecommunications service providers.
  - (d) Lifeline recipients shall not be assessed a state universal service fee, if one is established by the Authority.
  - (e) Lifeline recipients shall not be assessed a charge for toll blocking by telecommunications service providers.
  - (f) Telecommunications service providers shall not assess qualified Lifeline customers a security deposit if said customer agrees to subscribe to a toll blocking service.
  - (g) Telecommunications service providers shall provide a six (6) free call allowance on directory assistance charges to Lifeline customers.
- (6) Link-up Support Credits
- (a) A qualified recipient shall receive a reduction in the charge for installing new or transferring existing service as provided by the FCC.
  - (b) Qualifying low-income customers who have paid full installation charges for service may retroactively receive the Link-up credit on their telephone bill if they notify the telecommunications service provider within sixty (60) days from the date of the completion of the service order.
  - (c) The purchase or installation of telephone equipment, such as the wiring of telephone jacks, does not qualify for Link-up support.
- (7) Educational Outreach Efforts
- (a) Telecommunications service providers offering Lifeline and Link-up shall establish a consumer outreach education plan, in coordination with the Authority, that will be aimed at informing the low-income population within their service area of the availability of the telephone assistance programs.
  - (b) At the time of the request for installation of new local service or the transferring of existing local service, telecommunications service providers offering Lifeline and Link-up shall inform all residential customers of the availability of telephone assistance programs and how to receive the discounts. A copy of the script used by telecommunications service providers shall be made available to the Authority upon request.

## (8) Lifeline and Link-up Reporting Requirements

- (a) Telecommunications service providers providing Lifeline and Link-up shall provide quarterly status reports to the Authority summarizing the number of customers receiving the benefits of the Telephone Assistance Programs. The report shall breakdown the racial composition of the recipients along with the total dollar benefit for that period of time.
- (b) Telecommunications service providers shall provide other reports as required by the Authority in order to ensure compliance with this Rule Section.

**Authority:** T. C. A. §§ 65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.20 TELEPHONE NUMBERING CONSERVATION**

- (1) Telecommunications service providers, or any other carrier operating in Tennessee assigned telephone numbers by the North American Numbering Plan Administrator (“NANPA”), shall take all appropriate measures to conserve telephone number resources, which include, but are not limited to the following:
  - (a) All telecommunications service providers, as well as any carrier assigned numbering resources by the NANPA within Tennessee, shall sequentially assign telephone numbers within each 1,000 block of numbers in accordance with FCC guidelines.
  - (b) Assignment of telephone numbers in uncontaminated 1,000 number blocks is not permitted until existing 1,000 blocks where number assignment is occurring achieves at a minimum of 75 percent utilization rate or at the utilization rate determined by the FCC.
  - (c) A telecommunications service providers that has designated rate centers within an area code shall take the necessary steps to consolidate its rate centers where deemed feasible by the Authority.
  - (d) All telecommunications service providers that are Local Number Portability (“LNP”) capable shall participate in 1,000 block pooling as ordered by the Authority.
  - (e) All telecommunications service providers, as well as any carrier assigned numbering resources by the NANPA within Tennessee, shall submit to the Authority upon request the results of a numbering resource utilization audit conducted by an independent auditor approved by the Authority.
  - (f) Any carrier assigned telephone number resources by the NANPA within Tennessee shall return any and all unused or insufficiently used 1,000 number blocks as ordered by the Authority.
  - (g) All telecommunications service providers shall comply with any other number conservation measures ordered by the Authority.

**Authority:** T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.21 TOLL FREE COUNTY-WIDE CALLING**

Telecommunications Service Providers shall provide toll-free calling on calls originating and terminating within the same county consistent with all applicable law.

*Authority:* T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

**1220-4-2-.22 ENFORCEMENT PROVISIONS**

Violation of the provisions of this Chapter shall be subject to the provisions of Tenn. Code Ann. § 65-4-120.

*Authority:* T. C. A. §§65-2-102, 65-4-104, 65-4-106, 65-4-117, 65-4-119, 65-4-120, 65-4-123, 65-4-124, 65-5-207, 65-21-114.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2000. (09-34)

## WILDLIFE PROCLAMATIONS

### TENNESSEE WILDLIFE RESOURCES COMMISSION-1660

#### PROCLAMATION 00-14 WILDLIFE IN NEED OF MANAGEMENT

Pursuant to the authority granted by Tennessee Code Annotated, Sections 70-8-104 and 70-8-107, the Tennessee Wildlife Resources Commission does hereby declare the following species to be wildlife in need of management.

#### SECTION I. SPECIES

##### FISH

CommonName	ScientificName	FedStatus*
Alabama Shad	<i>Alosa alabamae</i>	—
Crystal Darter	<i>Ammocrypta asprella</i>	MC
Naked Sand Darter	<i>Ammocrypta beani</i>	—
Scaly Sand Darter	<i>Ammocryptavivax</i>	—
Highfin Carpsucker	<i>Carpionodes velifer</i>	—
Smoky Dace	<i>Clinostomus</i> sp. cf. <i>funduloides</i>	—
Emerald Darter	<i>Etheostoma baileyi</i>	—
Teardrop Darter	<i>Etheostoma barbouri</i>	—
Splendid Darter	<i>Etheostoma barrenense</i> ( <i>Ulocentra</i> , sp.)	—
Orangefin Darter	<i>Etheostoma bellum</i>	—
Redband Darter	<i>Etheostoma luteovinctum</i>	—
Finescale Darter	<i>Etheostoma microlepidum</i>	MC
Dirty darter	<i>Etheostoma olivaceum</i>	—
Firebelly Darter (=Red Snubnose Darter)	<i>Etheostoma pyrrhogaster</i> [= <i>E. locentra</i> ]	MC
Arrow Darter	<i>Etheostoma sagitta</i>	—
Tuscumbia Darter	<i>Etheostoma tuscumbia</i>	MC
Tippecanoe Darter	<i>Etheostoma tippecanoe</i>	—
Golden Top minnow	<i>Fundulus chrysotus</i>	—
Flame Chub	<i>Hemitremia flammea</i>	MC
Plains Minnow	<i>Hybognathus placitus</i>	—
Southern Brook Lamprey	<i>Ichthyomyzon gagei</i>	—
Silver Lamprey	<i>Ichthyomyzo nunicuspis</i>	—
Lined Chub	<i>Notropis lineapunctatus</i>	—
Harelip Sucker	<i>Lagochila lacera</i>	—
Alligator Gar	<i>Lepisosteus spatula</i>	—
Sturgeon Chub	<i>Macrhybopsis</i> (= <i>Hybopsis</i> ) <i>gelida</i>	—
Sicklefin Chub	<i>Macrhybopsis</i> (= <i>Hybopsis</i> ) <i>meeki</i>	—
Blackfin Sucker	<i>Moxostoma atripinne</i>	—
Bigmouth Shiner	<i>Notropis dorsalis</i>	—

<b>Common Name</b>	<b>ScientificName</b>	<b>FedStatus*</b>
Roseface Shiner	<i>Notropis rubellus rubellus</i>	—
Bedrock Shiner	<i>Notropis rupestris</i>	—
Northern Madtom	<i>Noturus stigmosus</i>	MC
Tangerine Darter	<i>Percina aurantiaca</i>	—
Blotchside Logperch	<i>Percina burtoni</i>	MC
Blackfin Darter	<i>Percina (Odontophilus)sp.</i>	—
Slenderhead Darter	<i>Percina phoxocephala</i>	—
Olive Darter	<i>Percina squamata</i>	MC
Freckle belly darter	<i>Percina stictogaster</i>	—
Mountain Dace	<i>Phoxinus tennesseensis</i>	—
Southern Cavefish	<i>Typhlichthys subterraneus</i>	MC

### AMPHIBIANS

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
-----	<i>Ambystoma barbouri</i>	—
Hellbender	<i>Cryptobranchus a. alleganiensis</i>	MC
Seepage Salamander	<i>Desmognathus aeneus</i>	MC
Black Mountain Dusky Salamander	<i>Desmognathus welteri</i>	—
Pygmy Salamander	<i>Desmognathus wrighti</i>	MC
Junaluska Salamander	<i>Eurycea junaluska</i>	MC
Four Toed Salamander	<i>Hemidactylium scutatum</i>	—
Barking Treefrog	<i>Hyla gratiosa</i>	—
Weller's Salamander	<i>Plethodon welleri</i>	—
Wehrle's Salamander	<i>Plethodon wehrlei</i>	—

### REPTILES

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Coal Skink	<i>Eumeces anthracinus</i>	—
Alligator Snapping Turtle	<i>Macrolemys temmincki</i>	MC
Green Water Snake	<i>Nerodia (Natrix) cyclopion</i>	—
Eastern Slender Glass Lizard	<i>Ophisaurus attenuatus ongicaudus</i>	—

### BIRDS

<b>CommonName</b>	<b>ScientificName</b>	<b>Fed.Status*</b>
Sharp-shinned Hawk	<i>Accipiter striatus</i>	—
Henslow's Sparrow	<i>Ammodramus henslowii</i>	MC
Anhinga	<i>Anhinga anhinga</i>	—
Great Egret	<i>Casmerodius albus</i>	—
Northern Harrier	<i>Circus cyaneus</i>	—
Olive-sided Flycatcher	<i>Contopus cooperii (=borealis)</i>	—
Cerulean Warbler	<i>Dendroica cereulea</i>	—

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Little Blue Heron	<i>Egretta caerulea</i>	—
Snowy Egret	<i>Egretta thula</i>	—
Common Moorhen	<i>Gallinula chloropus</i>	—
Bald Eagle	<i>Haliaeetus leucocephalus</i>	T->MC
Mississippi Kite	<i>Ictinia mississippiensis</i>	—
Least Bittern	<i>Ixobrychus exilis</i>	—
Loggerhead Shrike	<i>Lanius ludovicianus</i>	MC
Swainson's Warbler	<i>Limothlypis swainsonii</i>	MC
Black-capped Chickadee	<i>Poecile atricapillus</i>	MC
Vesper Sparrow	<i>Pooecetes gramineus</i>	—
King Rail	<i>Rallus elegans</i>	—
Yellow-bellied Sapsucker	<i>Sphyrapicus varius appalaciensis</i>	MC
Common Barn-Owl	<i>Tyto alba</i>	—
Golden-winged Warbler	<i>Vermivora chrysoptera</i>	MC

### MAMMALS

<b>Common Name</b>	<b>ScientificName</b>	<b>Fed.Status*</b>
Star-nosed Mole	<i>Condylura cristata</i>	
Yellownose (=Rock) Vole	<i>Microtus chrotorrhinus</i>	
Woodland Jumping Mouse	<i>Napaeozapus insignis</i>	
Small-footed Bat	<i>Myotis leibii</i>	
Eastern Woodrat	<i>Neotoma floridana</i>	
Hairy-tailed Mole	<i>Parascalops breweri</i>	
Rafineque's (=Southeastern) Big-eared Bat	<i>Plecotus rafinesquii</i>	
Masked Shrew	<i>Sorex cinereus</i>	
Longtail Shrew	<i>S.dispar</i>	
Smoky Shrew	<i>S.fumeus</i>	
Southeastern Shrew	<i>S.longirostris</i>	
Water Shrew	<i>S.palustris</i>	
Southern Bog Lemming	<i>Synaptomys cooperi</i>	
Meadow Jumping Mouse	<i>Zapus hudsonius</i>	

### CRUSTACEANS

—	<i>Orconectes alabamensis</i>	
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\*Federal Status-MC=Of Management Concern.

## SECTION II. REGULATIONS

Pursuant to Tennessee Code Annotated, Section 70-8-104(b):

1) It shall be unlawful for any person to knowingly destroy the habitat of "Wildlife in Need of Management", except as authorized by the Executive Director.



2) The Executive Director of the Tennessee Wildlife Resources Agency may permit the taking, possession, transportation, exportation or shipment of species or subspecies on the list of "Wildlife in Need of Management" for scientific or educational purposes, for propagation in captivity or for other purposes to benefit, or not harmful to, the species.

3) Upon good cause shown, and where necessary to alleviate damage to property, to protect human health and safety, "Wildlife in Need of Management" may be removed, captured, or destroyed but only pursuant to a permit issued by the Executive Director, and by and under supervision of an agent of the agency; provided these species may be removed, captured, or destroyed without permit by any person in emergency situations involving immediate threat to human life; provided that such unpermitted actions are immediately reported to a wildlife officer.

**SECTION III. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 94-16, dated September 27, 1994.

Proclamation No. 00-14 received and recorded this 9th day September, 2000. (09-06)

**TENNESSEE WILDLIFE RESOURCES COMMISSION-1660**

**PROCLAMATION 00-15  
ENDANGERED OR THREATENED SPECIES**

Pursuant to the authority granted by Tennessee Code Annotated, Sections 70-8-105 and 70-8-107, the Tennessee Wildlife Resources Commission does hereby declare the following species to be endangered or threatened subject to the regulations as herein provided.

**SECTION I. ENDANGERED OR THREATENED SPECIES**

**MOLLUSKS**

**MUSSELS-ENDANGERED**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed**</b>
Cumberland elktoe	<i>Alasmidonta atropurpurea</i>	E
Appalachian elktoe	<i>Alasmidonta raveneliana</i>	E
Birdwing pearly mussel	<i>Conradillacaelata (=Limioxrimosus)</i>	E
Fanshell Mussel	<i>Cyprogania stegaria (=irrorata)</i>	E
Dromedary pearly mussel	<i>Dromus dromas</i>	E
Cumberlandian combshell	<i>Epioblasma brevidens</i>	E
Oyster mussel	<i>Epioblasma capsaeformis</i>	E
Yellow-blossom pearly mussel	<i>Epioblasma (=Dysnomia) florentina florentina</i>	E
Upland combshell	<i>E. metastrata</i>	E
Souther nacornshell	<i>E. othcaloogensis</i>	E

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed**</b>
Green-blossom pearly mussel	<i>E.(=Dysnomia) torulosa Gubernaculum</i>	E
Tubercled-blossom pearly mussel	<i>E.(=Dysnomia) torulosa Torulosa</i>	E
Turgid-blossom pearly mussel	<i>E.(=Dysnomia) turgidula</i>	E
Tan riffleshell	<i>E.(=Dysnomia) walkeri</i>	E
Purpl eCat's Paw Pearly mussel	<i>E.(=Dysnomia) obliquata obliquata</i> <i>(=E.sulcatasulcata)</i>	E
Fine-rayed pigtoe	<i>Fusconaia cuneolus</i>	E
Shiny pigtoe	<i>F. cor (=edgariana)</i>	E
Cracking pearly mussel	<i>Hemistena (=Lastena) lata</i>	E
Pink mucket pearly mussel	<i>Lampsilis abrupta (=orbiculata)</i>	E
Alabama lamp pearly mussel	<i>L. virescens</i>	E
Coosa moccasin shell	<i>Medionidus parvulus</i>	E
Ring pink mussel	<i>Obovaria retusa</i>	E
Little-wing pearly mussel	<i>Pegias fabula</i>	E
White warty-back pearly mussel	<i>Plethobasus cicatricosus</i>	E
Orange-footed (=pimpleback) pearly mussel	<i>P. cooperianus</i>	E
Clubshell	<i>Pleurobema clava</i>	E
Southern clubshell	<i>P.decisum</i>	E
Southern pigtoe	<i>P.georgianum</i>	E
Cumberland pigtoe (=Cumberland pigtoe mussel)	<i>P.gibberum</i>	E
Ovate clubshell	<i>P.perovatum</i>	E
Rough pigtoe pearly mussel	<i>P.plenum</i>	E
Triangular kidney shell	<i>Ptychobranhus greeni</i>	E
Rough rabbitsfoot	<i>Quadrula cylindrica strigillata</i>	E
Cumberland monkey face pearly mussel	<i>Quadrula intermedia</i>	E
Winged mapleleaf mussel	<i>Q. fragosa</i>	E
Appalachian monkey face pearly mussel	<i>Q. sparsa</i>	E
Pale lilliput pearly mussel	<i>Toxolasma (=Carunculina) cylindrella</i>	E
Cumberland bean pearly mussel	<i>Villosa (=Micromya) trabalis</i>	E
Purple bean	<i>Villosa perpurpurea</i>	E

**SNAILS–Endangered**

<b>CommonName</b>	<b>ScientificName</b>	<b>Fed**</b>
Painted snake coiled forest snail	<i>Anguispira picta</i>	T
Anthony's riversnail	<i>Athearnia anthonyi</i>	E
Royal Snail	<i>Pyrgulopsis (=Marstonia) ogmorhaphe</i>	E

**MUSSELS–Threatened**

<b>CommonName</b>	<b>ScientificName</b>	<b>Fed**</b>
Alabama moccasin shell	<i>Medionidus acutissimus</i>	T
Fine-lined pocketbook	<i>Lampsilis altilis</i>	T

**FISH****FISH-Endangered**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Lake Sturgeon	<i>Acipenser fulvescens</i>	MC
Blue Shiner	<i>Cyprinella (=Notropis) caerulea (=caeruleus)</i>	T
Tuckasegee Darter	<i>Etheostoma blenniodes gutselli</i>	—
Bluemask (=jewel) Darter	<i>E. (Doration) sp</i>	E
Duskytail Darter	<i>E. (=Catonotus sp.)</i>	E
Crown Darter	<i>E. (=Catonotus sp.) corona</i>	MC
Barrens Darter	<i>E. (=Catonotus sp.) forbesi</i>	MC
Egg-mimic Darter	<i>E. (=Catonotus) pseudovulatum</i>	MC
Boulder Darter	<i>E. (Nothonotus) wapiti</i>	E
Barrens Topminnow	<i>Fundulus julisia</i>	MC
Palezone Shiner	<i>Notropis sp. (cf. N. procne)</i>	E
Smoky Madtom	<i>Noturus baileyi</i>	E
Yellowfin Madtom	<i>Noturus flavipinnis</i>	T
Chucky madtom	<i>Noturus (Rabida) sp.</i>	MC
Pygmy Madtom	<i>Noturus stanauli</i>	E
Amber Darter	<i>Percina antesella</i>	E
Conasauga (=Reticulate) Logperch	<i>P.jenkinsi</i>	E
Pallid Sturgeon	<i>Scaphirhynchus albus</i>	E

**FISH-Threatened**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Western Sand Darter	<i>Ammocrypta clara</i>	—
Blue Sucker	<i>Cycleptus elongates</i>	MC
Spotfin chub	<i>Cyprinella (=Hybopsis) monacha</i>	T
Slender Chub	<i>Erimystax (=Hybopsis) cahni</i>	T
Slackwater Darter	<i>Etheostomaboschungii</i>	T
Ashy Darter	<i>Etheostoma cinereum</i>	MC
Striated darter	<i>Etheostoma striatulum</i>	MC
Coldwater Darter	<i>Etheostoma ditrema</i>	MC
Trispot Darter	<i>Etheostoma trisella</i>	MC
Coppercheek Darter	<i>Etheostomaaquali (cf. E. maculatum)</i>	MC
Holliday (=Ellijay) Darter	<i>Etheostoma (=Ulocentra) sp.</i>	—
Silverjaw Minnow	<i>Notropis (=Ericymba) buccata</i>	—
Frecklebelly Madtom	<i>Noturus munitus</i>	MC
Snail Darter	<i>Percina tanasi</i>	T
Blackside Dace	<i>Phoxinus cumberlandensis</i>	T

**AMPHIBIANS****THREATENED**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Tennessee Cave Salamander	<i>Gyrinophilus palleucus</i>	

**REPTILES****THREATENED**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Bog Turtle	<i>Clemmys muhlenbergi</i>	MC
Northern Pine Snake	<i>Pituophism.melanoleucus</i>	MC
Western Pigmy Rattlesnake	<i>Sistrurusmiliariusstreckeri</i>	—

**BIRDS****BIRDS–Endangered**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Bachman’s Sparrow	<i>Aimophila aestivalis</i>	MC
Peregrine Falcon	<i>Falco peregrinus</i>	—
Least Tern	<i>Sterna antillarum</i>	E
Bewick’s Wren	<i>Thryomanes bewickii</i>	MC

**BIRDS–Threatened**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Northern Saw-whet Owl	<i>Aegolius acadicus</i>	MC
Golden Eagle	<i>Aquila chrysaetos</i>	—
Lark Sparrow	<i>Chondestes grammacus</i>	—
Common Raven	<i>Corvus corax</i>	—

**MAMMALS****ENDANGERED**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Carolina Northern Flying Squirrel	<i>Glaucomys sabrinus coloratus</i>	E
Gray Myotis	<i>Myotis grisescens</i>	E
Indiana Myotis	<i>M.sodalis</i>	E

## CRUSTACEANS

**CRAYFISH–Endangered**

<b>CommonName</b>	<b>ScientificName</b>	<b>Fed.Status*</b>
Big South Fork Crayfish —	<i>Cambarus bouchardi</i>	—
Valley Flame Crayfish —	<i>Cambarus cymatilis</i>	MC
—	<i>Cambarus deweesae</i>	—
—	<i>Cambarus pristinus</i>	MC
—	<i>Cambarus williami</i>	—
Hatchie Burrowing Crayfish	<i>Fallicambarus hortonii</i>	—
Tennessee Cave Crayfish	<i>Orconectes incomptus</i>	MC
Nashville Crayfish	<i>Orconectes shoupi</i>	E
—	<i>Orconectes wrighti</i>	MC

**CRAYFISH–Threatened**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Fed.Status*</b>
Chickamauga Crayfish	<i>Cambarus extraneus</i>	MC
Obey Crayfish	<i>Cambarus obeyensis</i>	MC

\*Fed Status: E=Federally Endangered, T=Federally Threatened, MC=Federal Mgt. Concern

**SECTION II. REGULATIONS**

Except as provided for in Tennessee Code Annotated, Section 70-8-106 (d) and (e), it shall be unlawful for any person to take, harass, or destroy wildlife listed as threatened or endangered or otherwise to violate terms of Section 70-8-105(c) or to destroy knowingly the habitat of such species without due consideration of alternatives for the welfare of the species listed in (1) of this proclamation, or (2) the United States list of Endangered fauna.

**SECTION III. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 94-17, dated September 27, 1994.

Proclamation No 00-15 received and recorded this 9th day of September, 2000. (09-12)

**TENNESSEE WILDLIFE RESOURCES COMMISSION PROCLAMATION - 1660****PROCLAMATION 00-16  
MIGRATORY BIRD HUNTING SEASONS AND BAG LIMITS  
2000-2001 SEASON**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-4-107 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following migratory bird hunting regulations effective October 1, 2000: (Season dates and limits pending final Federal Frameworks.)

**SECTION I. HUNTING SEASONS**

Species	Season Opens	Season Closes
A. Ducks, Coots, and Mergansers		
Reelfoot Duck Zone	Nov. 18 Dec. 2	Nov. 19 Jan. 19
Reelfoot Duck Zone shall include the waters of Reelfoot Lake.		
Remainder of State	Dec. 2 Dec. 16	Dec. 5 Jan. 31
B. Youth Waterfowl Hunting Day 2-Day Only - Reelfoot Duck Zone and Remainder of State	Feb. 3	Feb. 4
Youth waterfowl hunters must be 15 years of age or younger. An adult at least 18 years of age must accompany the youth hunter into the field. This adult cannot duck hunt but may participate in other open seasons.		
C. Purple Gallinules and Common Moorhens		
Reelfoot Duck Zone	Nov. 18 Dec. 2	Nov. 19 Jan. 19
Remainder of State	Dec. 2 Dec. 16	Dec. 5 Jan. 21
D. Virginia Rails and Sora Rails		
Reelfoot Duck Zone	Nov. 18 Dec. 2	Nov. 19 Jan. 19
Remainder of State	Dec. 2 Dec. 16	Dec. 5 Jan. 20
E. White-fronted Geese	Nov. 22	Feb. 15
F. Blue, Snow, and Ross' Geese	Nov. 18	Mar. 4

Species	Season Opens	Season Closes
G. Brant	Dec. 2	Jan. 31
H. Canada Geese		
1. Northwest MVP Zone: Mississippi Valley Population Lake, Obion, and Weakley Counties, and Those Portions of Gibson and Dyer Counties Not Included in the Southwest MVP Zone.	Dec. 2	Feb. 15 or earlier if quota is reached <sup>1</sup>
Harvest Quota - 8,900		
<sup>1</sup> Key harvest areas will be monitored and a season closure will result in the Northwest MVP Zone when an estimated 6,400 geese have been harvested in the Reelfoot Quota Zone. The Reelfoot Quota Zone is defined as that area surrounding Reelfoot Lake bounded on the east by State Highways 22 and 157 and County Road #8165, north by the TN-KY state line, west by State highway 78, and south by County Road #8151.		
2. Southwest MVP Zone: Mississippi Valley Population That portion of the state bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.	Dec. 2	Jan. 31 or earlier if quota is reached
Harvest Quota - 1,000		
3. Kentucky/Barkley Lakes Zone: Southern James Bay Population That area west of Highway 13 not in the Northwest and Southwest MVP Zones.	Dec. 13	Jan. 31 or earlier if quota is reached <sup>2</sup>
Harvest Quota - 1,800		
<sup>2</sup> Harvest in the Kentucky/Barkley Lakes Zone will be monitored daily. If the harvest reaches the assigned quota of 1,800 Canada geese before Jan. 31, a closure will result. Kentucky/Barkley Lakes Zone Canada Goose Tagging - All Canada geese harvested must be must be taken together to the nearest checking station by the most reasonably direct route and checked out. The checking station will record the kill and issue a permanent harvest tag. The permanent harvest tag is a legal document and must be signed by the hunter. By signing the permanent harvest tag, the hunter is affirming that the information, as it appears on the permanent tag, is correct and valid. The permanent game tag must remain with each carcass until final processing. Persons legally hunting without a license are also required to take any Canada goose harvested to a check station.		
4. Remainder of the State:	Oct. 7 Dec. 2	Oct. 15 Jan. 31

The Remainder of the State includes all counties or portions of counties east of State Highway 13.

**SECTION II. SHOOTING HOURS**

From 1/2 hour before sunrise to sunset daily, for all species and seasons

**SECTION III. BAG AND POSSESSION LIMITS**

A. Ducks and Mergansers

Daily Bag Limit:

The Daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be a female), 1 black duck, 2 wood ducks, 1 pintail, 3 scaup, 2 redheads, and 1 canvasback. The daily bag limit of merganser is 5, only 1 of which may be a hooded merganser. Possession Limit: The maximum number of birds which could have legally been taken in two (2) days.

		Daily Bag	Possession
B.	Coots, Purple Gallinules, and Common Moorhens	15	30
C.	Virginia and Sora Rails	25	25
D.	Blue, Snow, and Ross' Geese	20	None
E.	White-fronted Goose	2	4
F.	Brant	2	4
G.	Canada Goose	2	4

**SECTION IV. REPEAL OF PRIOR PROCLAMATION**

This Proclamation repeals in its entirety proclamation 99-17, dated August 26, 1999, and amended by proclamation 99-20, dated September 30, 1999.

Proclamation No. 00-16 received and recorded the 6th day of September, 2000. (09-01)



**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660****PROCLAMATION 00-17  
PROHIBITING THE FEEDING OF BLACK BEARS IN GATLINBURG**

Pursuant to the authority granted by Title 70, Title Code Annotated, and Sections 70-1-302 and 70-5-101 thereof, the Tennessee Wildlife Resources hereby proclaims the following regulations pertaining to the feeding of black bears:

**SECTION I. BLACK BEAR FEEDING PROHIBITED**

It is unlawful to feed a black bear or leave food or garbage in a manner that attracts bears. It is also unlawful to engage in any indirect or incidental feeding of bears if the activity occurs after notice from either the City of Gatlinburg or a law enforcement officer thereof or from an employee of the Tennessee Wildlife Resources Agency to the person responsible for such indirect or incidental feeding. Such notification shall include the type of activity, which is prohibited. Further such activity by the responsible person after notice shall be a violation of this section.

**SECTION II. AREAS CLOSED TO THE FEEDING OF BLACK BEARS**

For the purposes of this proclamation, areas closed to the feeding of bears include the Corporate Limits of the City of Gatlinburg and Chalet Village North Subdivision, as posted. A more complete description may be found on file in the office of the Tennessee Wildlife Resources Agency in Nashville, Tennessee.

Proclamation No. 00-17 received and recorded this 6th day of September, 2000. (09-10)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660****PROCLAMATION 00-18  
PROCLAIMING BRIDGESTONE/FIRESTONE  
CENTENNIAL WILDERNESS WILDLIFE MANAGEMENT AREA**

Pursuant to the authority granted by Title 70, Tennessee Annotated, Section 70-1-302, the Tennessee Wildlife Resources Commission hereby proclaims the following area formerly known as Bridgestone/Firestone Conservation Area, a Wildlife Management Area as Bridgestone/Firestone Centennial Wilderness Wildlife Management Area.

Those lands and waters owned by the State of Tennessee in Cumberland, White and Van Buren Counties commonly known as Scott's Gulf, as posted. A more complete description may be found on file in the Tennessee Wildlife Resources Agency office in Nashville, Tennessee.

This proclamation repeals Proclamation 98-26 dated September 24, 1998.

Proclamation No.00-18, received and recorded the 6th day of September, 2000. (09-02)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660****PROCLAMATION 00-19  
PROCLAIMING INTERNATIONAL PAPER PUBLIC HUNTING AREA**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, Section 70-1-302 and 70-5-101, the Tennessee Wildlife Resources Commission hereby proclaims the following area to be known as the International Paper Public Hunting Area.

Lands and waters in Lawrence, Hickman, Hardin, Lewis, and Wayne Counties, owned by International Paper Company as registered in deed books of the aforementioned counties and under agreement to the Tennessee Wildlife Resources Agency as posted. A more complete description may be found on file in the office of Tennessee Wildlife Resources Agency in Nashville, Tennessee and at the Waynesboro District office of International Paper Company in Waynesboro, Tennessee

This proclamation repeals Proclamation 86-26, dated September 5, 1986 and Proclamation 87-5 (establishing Bowater Hiwassee Land Company Public Hunting Area) dated August 27, 1987.

Proclamation No. 00-19 received and recorded this 6th day of September, 2000. (00-19)

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### 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 September 1, 2000, and ending September 29, 2000.*

  
RILEY C. DARNELL  
Secretary of State

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