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February 15, 2001
Volume 27, Number 2

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RILEY C. DARNELL
Secretary of State

Division of Publications
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PREFACE

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

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

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

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

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

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

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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 ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL

NOTICE OF WITHDRAWAL OF RULES

The Tennessee Air Pollution Control Board hereby gives notice of withdrawal of rules 1200-3-27-.04 and .06 filed with the Secretary of State on the 26th and 20th days of September, 2000, respectively, to have become effective on the 8th and 2nd days of February, 2001, respectively. (Sixty-day stays postponed the proposed effective dates of both rules.)

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 24th day of January, 2001. (01-17)

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 13.00 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 March, 2001 is 9.56 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 5.56 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 January 2001. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | TECHNICAL CONTACT |
|-------|-------------|---|--------------------------|-------------|---|---|-------------------|
| 01-01 | Jan 4, 2001 | 0400 Environment and Conservation 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 | Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville, TN 37243-1538 (615)532-0916 | March 21, 2001 |
| 01-02 | Jan 4, 2001 | 0400 Environment and Conservation Division of Administrative Services | Proposed Rules | Repeal | <i>Chapter 1200-17-1 Fee For Services</i> | Mr. Bill Weems Office of General Counsel 312 8th Ave N 25th Fl, Snodgrass Twr Nashville, TN 37243 (615) 532-0131 | May 31, 2001 |
| 01-03 | Jan 4, 2001 | 0400 Environment and Conservation Division of Water Supply | Rulemaking Hearing Rules | Amendments | <i>Chapter 1200-5-1 Public Water Systems</i> 1200-5-1-.33 Control of Lead and Copper | Robert Foster Water Supply 6 th fl L&C Twr Nashville TN 37243-1549 615-532-0155 | March 21, 2001 |
| 01-04 | Jan 5, 2001 | 1660 Wildlife Resources Commission | Rulemaking Hearing Rules | Amendments | <i>Chapter 1660-1-26 Rules and Regulations for Fish Farming, Catch-out Operations and Bait Dealers</i> 1660-1-26-.02 Rules - Fish Farming 1660-1-26-.04 Rules - Bait Dealer | Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606 | March 22, 2001 |
| 01-05 | Jan 5, 2001 | 1660 Wildlife Resources Commission | Rulemaking Hearing Rules | Amendments | <i>Chapter 1662-2-7 Rules and Regulations of Hunts</i> 1660-2-7-.09 Watauga Reservoir | Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606 | March 22, 2001 |
| 01-06 | Jan 5, 2001 | 1660 Wildlife Resources Commission | Rulemaking Hearing Rules | Amendments | <i>Chapter 1660-1-5 Rules and Regulations For Fishing</i> 1660-1-5-.03 TWRA Lakes | Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606 | March 22, 2001 |
| 01-07 | Jan 5, 2001 | 1660 Wildlife Resources Commission | Rulemaking Hearing Rules | New Rule | <i>Chapter 1660-2-7 Rules and Regulations for Governing Operations of Vessels</i> 1660-2-7-.35 Wolf River | Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606 | March 22, 2001 |

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | TECHNICAL CONTACT |
|-------|--------------|--|-----------------------------|-------------|--|---|-------------------|
| 01-12 | Jan 19, 2001 | 1255 Real Estate Appraiser Commission | Rulemaking Hearing Rules | Amendments | <p><i>Chapter 1255-1 General Provisions</i></p> <p>1255-1-.04 Application for Appraiser License or Certificate</p> <p>1255-1-.09 Licensure and Certification</p> <p>1255-1-.12 License and Certificate Renewal</p> <p>1255-1-.13 Registered Trainee</p> <p><i>Chapter 1255-2 Evaluation of Appraiser Education</i></p> <p>1255-2-.05 Course Provider Applications</p> <p>1255-2-.10 Inspections</p> <p>1255-2-.12 Withdrawal of Approval</p> <p>1255-2-.14 Repetition of Course Content</p> <p>1255-2-.15 Fees</p> <p><i>Chapter 1255-3 Evaluation of Appraisal Experience</i></p> <p>1255-3-.01 Real Estate Appraisal Experience</p> <p>1255-3-.03 Criteria for Standard and Review Appraisal Experience</p> <p><i>Chapter 1255-5 Standards of Professional Practice</i></p> <p>1255-5-.01 Uniform Standards of Appraisal Practice</p> <p>1255-5-.02 Civil Penalties</p> <p><i>Chapter 1255-6 Reciprocity</i></p> <p>1255-6-.01 Reciprocal Agreements</p> | Christy A. Allen Commerce and Insurance 312 8 th Ave N Snodgrass Twr 25 th Fl Nashville, TN 37243 (615) 741-3072 | April 5, 2001 |
| 01-13 | Jan 19, 2001 | 1020 Board of Examiners for Nursing Home Administrators | Rulemaking Hearing Rules | Amendments | <p><i>Chapter 1020-1 General Rules Governing Nursing Home Administrators</i></p> <p>1020-1-.06 Preceptors, Administrator In Training and Administrator in Training Program</p> <p>1020-1-.11 Licensure Renewal</p> <p>1020-1-.12 Continuing Education</p> | Robbie Bell, Deputy OGC 26 th Fl, Snodgrass Twr 312 8 th Ave N Nashville, TN 37247-0120 615-741-1611 | April 5, 2001 |
| 01-14 | Jan 19, 2001 | 0400 Environment and Conservation | Rulemaking Hearing Rules | New Rule | <p><i>Chapter 0400-5-1 Rules of the Dept of Environment and Conservation-General</i></p> <p>0400-5-1-.01 Fees for Copies of Deptal Public Records</p> | Mr. E. Joseph Sanders OGC 312 8 th Ave N 25 th Fl, Snodgrass Twr Nashville, TN 37243 (615) 532-0131 | April 5, 2001 |

| SEQ | FILE DATE | DEPT. & DIVISION | TYPE OF FILING | DESCRIPTION | RULE NUMBER AND RULE TITLE | LEGAL CONTACT | TECHNICAL CONTACT |
|-------|--------------|---|-------------------------------------|-------------|--|--|-------------------|
| 01-16 | Jan 25, 2001 | 1680 Transportation Overweight and Overdimensional Movements on TN Highways | Proposed Rules | Amendments | <i>Chapter 1680-2-2</i> 1680-2-2-.02 General Information-Permits 1680-2-2-.06 Conditions for Permitting Overwidth Movements 1680-2-2-.07 Additional Requirement for Equipment with Blades 1680-2-2-.08 Width in Excess of Sixteen Feet (16') 1680-2-2-.12 Time Restrictions 1680-2-2-.14 Conditions for Permitting Movement of Site-Built Houses 1680-2-2-.16 Conditions for Permitting Movement of Houseboats 1680-2-2-.24, Fees | John Reinbold Dept of Transportation Suite 700 James K. Polk Nashville TN 372143-0332 615-741-2941 | May 31, 2001 |
| 01-17 | Jan 24, 2001 | 0400 Environment and Conservation Air Pollution Control Board | Notice of withdrawal of rules | | 1200-3-27-.04 1200-3-27-.06 | John Patton 532-0604 | |
| 01-19 | Jan 31, 2001 | 0940 Dept of Mental Health and Developmental Disabilities Office of the Commissioner | Proposed Rules | New rules | <i>Chapter 0940-1-4</i> <i>Reporting to Statewide Abuse Registry of Suspected Client Abuse, Neglect, Mistreatment</i> 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 C. Tyler, Director Mental Health and Developmental Disabilities Office of Legal Counsel 2600 Snodgrass Twr 312 8th Ave N Nashville, TN 37243 (615) 532-6518 | May 31, 2001 |

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

Applications will be heard at the March 28, 2001
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 January 1, 2001. 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

Kentucky/Tennessee Outpatient Treatment Center
1082 Bradford Hicks Drive
Livingston (Overton Co.), TN 38570
Geraldine Copeland – (877)—201-3002
CN0011-104

The establishment of a none-residential methadone treatment center. The 3600 square foot facility will be located at 1082 Bradford Hicks Drive in Livingston (Overton County), Tennessee.
\$ 125,000.00

Mercy Hospice, Inc.
137 Cypress Avenue
Selmer (McNairy Co.), TN 38375
Katherine Yopp – (662)—837-9990
CN0011-105

The establishment of a home care organization providing hospice services to residents of Hardeman, Hardin, Chester, and McNairy counties in Tennessee. The agency will be located at 137 Cypress Avenue in Selmer (McNairy County), Tennessee.
\$ 17,500.00

Blueridge Home Health Care
194 Stout Hollow Road
Hampton (Carter Co.), TN 37658
Betsy Simerly (423)—725-4189
CN0011-106

The establishment of a home care organization providing home health services to serve Carter, Johnson, and Unicoi Counties. The proposed agency will be located at 194 Stout Hollow Road in Hampton (Carter County), Tennessee.
\$ 108,000.00

| NAME AND ADDRESS | DESCRIPTION |
|--|---|
| +West Tennessee Orthopedics and Sports Medicine, P.C., d/ b/a Sports, Orthopedics and Spine 569 Skyline Drive, Suite 100 Jackson (Madison Co.), TN 38301 Graham Baker – (615)—383-3332 CN0012-115 | The establishment of an outpatient diagnostic center (ODC), the acquisition of a magnetic resonance imaging (MRI) unit, and the initiation of MRI services at 569 Skyline Drive, Suite 100, Jackson, Madison County, Tennessee. \$ 1,289,518 |
| +The Jackson Clinic 616 West Forest Avenue Jackson (Madison Co.), TN 38301 John Wellborn – (615)—269-0070 CN0012-116 | The initiation of MRI services and the acquisition of a mag- netic resonance imaging unit. \$ 2,298,433 |
| Blount Memorial Transitional Care 2304 East Lamar Alexander Parkway Maryville (Blount Co.), TN 37804 Karen J. Moore – (865)—977-5531 CN0012-117 | The relocation of 30-skilled nursing home beds from Blount Memorial Hospital to the campus of MorningView Village, an assisted living facility owned by Blount Memorial Hospi- tal, and the addition of 30-skilled nursing home beds to cre- ate a 60-bed skilled nursing facility. \$ 7,645,313 |
| Memphis Boys Town 7410 Memphis-Arlington Road Bartlett (Shelby Co.), TN 38134 Margaret Ryan – (901)—252-7706 CN0012-118 | The establishment of a 62-bed residential treatment facility to be located at 7410 Memphis-Arlington Road in Bartlett, Tennessee. \$ 9,660,036 |
| Private Clinic East 2215 South Roane Street Harriman (Roane Co.), TN 37748 J. Paul Connell – (706)—861-6458 CN0012-119 | The establishment of a non-residential methadone treatment facility to be located at 2215 South Roane Street, in Harriman, Roane County, Tennessee. \$ 311,900 |
| Harpeth Ridge Home Health, Inc. 7104 Cox Pike Fairview (Williamson Co.), TN 37062 Graham Baker – (615)—383-3332 CN0012-121 | The establishment of a home-care organization providing home health and hospice services. The parent agency will be located at 7104 Cox Pike, Fairview, Williamson County, Tennessee. In addition to Williamson County, the service area will include Cheatham, Davidson, Dickson, and Hickman Counties. \$ 258,327 |

| NAME AND ADDRESS | DESCRIPTION |
|---|---|
| <p>Stones River Hospital 324 Doolittle Road Woodbury (Cannon Co.), TN 37190 William Patterson – (615)—563-7200 CN0012-122</p> | <p>The conversion of eight (8) acute hospital beds to eight (8) geriatric psychiatric (geri-psych) beds. If approved, this will increase the number of geri-psych beds from fourteen (14) to twenty-two (22). There will be no change in the total licensed bed complement. \$ 33,000</p> |
| <p>Surgery Center of Morgan County, LLC 1237 Highway 62 Wartburg (Morgan Co.), TN 37887 Jerry W. Taylor – (615)—726-1200 CN0012-123</p> | <p>The establishment of a freestanding ambulatory surgical treatment center (ASTC) and outpatient diagnostic center (ODC). The facility will be located at 1237 Highway 62, Wartburg, Tennessee and will include one operating room, MRI, CT, and other related ancillary services. \$ 1,594,595</p> |
| <p>Covenant Staffing Services, Inc. 280 Fort Sanders West Blvd., Suite 216 Knoxville (Knox Co.), TN 37922 John Huskey – (865)—374-0602 CN0012-124</p> | <p>The relocation of Covenant Staffing Services, Inc. parent office from Oak Ridge in Anderson County to Knoxville, Knox County, Tennessee. The service area will remain the same and consists of the following counties: Anderson, Knox, Roane, Morgan, Scott, Loudon and Campbell. \$ 191,160</p> |
| <p>Nashville Vision Correction, LLC 300 20th Avenue North, Suite 504 Nashville (Davidson Co.), TN 37203 Graham Baker – (615)—383-3332 CN0012-125</p> | <p>The establishment of an ambulatory surgical treatment center (ASTC) limited to vision correction surgical procedures only. The facility will consist of approximately 967 square feet and will be located at 300 20th Avenue North, Suite 504, in Nashville, Davidson County, Tennessee. \$ 686,853</p> |

**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800
TOSHA DIVISION**

CORRECTION

A typographical error was made in the transmission of data from the Department of Labor and Workforce Development to the Secretary of State. These mistakes appear in the December 15 T.A.R. on page 16.

Amendment to Chapter 0800-1-6-.03 (2) should read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of September 30, 2000 except as provided in Rule 0800-1-6-.04 of this chapter.

Amendment to Chapter 0800-1-7-.01 (2) should read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of September 30, 2000 except as provided in Rule 0800-1-7-.02 of this chapter.

These two rules will become effective on the 30th day of March, 2001 unless properly petitioned.

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EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

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

- 1500 - Tennessee Human Rights Commission, emergency rule providing for the hiring of private contractors to investigate complaints of discrimination, chapter 1500-1, Rules for Acting Upon Complaints of Discrimination, 10 T.A.R. (October 2000) - Effective September 7, 2000 through February 18, 2001. (09-16)
- 1500 - Tennessee Human Rights Commission, emergency rule providing for the hiring of private contractors to investigate complaints of discrimination, chapter 1500-1, Rules for Acting Upon Complaints of Discrimination, 10 T.A.R. (October 2000) - Effective September 7, 2000 through February 18, 2001. (09-13)
- 1660 - Wildlife Resources Commission - Emergency rules dealing with waterfowl blind sites, Chapter 1660-1-2, Rules and Regulations for Birds; and Chapter 1660-1-8, Rules and Regulations for Hunts, 10 T.A.R. (October 2000) - Effective September 6, 2000 through February 19, 2001. (09-19)

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PROPOSED RULES

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF ADMINISTRATIVE SERVICES

CHAPTER 1200-17-1 FEE FOR SERVICES

Presented herein is the proposed repeal of Rule Chapter 1200-17-1 Fee For Services of the Tennessee Department of Environment and Conservation submitted pursuant to Tennessee Code Annotated (T.C.A.) § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules pursuant to T.C.A. §§ 11-1-101(f) and The Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. 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 repeal is published. Such petition to be effective must be filed in Office of General Counsel, 25th Floor of the Snodgrass Building located at 312 8th Avenue North, Nashville, Tennessee 37243 and in the Department of State, Seventeenth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, TN 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the text of this proposed repeal contact: Mr. Bill Weems, 25th Floor Snodgrass Building, 312 8th Avenue North, Nashville TN 37243, Office of General Counsel and (615) 532-0131.

REPEALS

Rule Chapter 1200-17-1 Fee For Services is hereby repealed in its entirety.

Authority: T.C.A. §11-1-101(f).

The proposed rules set out herein were properly filed in the Department of State on the 4th day of January, 2001, 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 31st May, 2001. (01-02)

**DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940
OFFICE OF THE COMMISSIONER**

Presented herein are the proposed rules of the Department of Mental Health and Developmental Disability submitted pursuant to Tennessee Code Annotated (T.C.A.) § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Mental Health and Developmental Disabilities to promulgate these rules pursuant to T.C.A. §§ 11-1-101(f) and The Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the *Tennessee Administrative Register* in which the proposed rules are published. Such petition to be effective must be filed in the Department of Mental Health and Developmental Disabilities Office of Legal Counsel, 2600 Snodgrass Building located at 312 8th Avenue North, Nashville, Tennessee 37243 and in the Department of State, Eighth Floor, Snodgrass Building located at 312 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 a copy of these proposed rules, contact:

Anita M. Daniels
Tennessee Department of Mental Health and Developmental Disabilities
Office of Legal Counsel
2600 Snodgrass Building
312 Eighth Avenue North
Nashville, Tennessee 37243
(615) 532-6516

The text of the proposed rules is as follows:

NEW RULES

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| 0940-1-4-.01 Purpose | 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 |
| 0940-1-4-.02 Definitions | |
| 0940-1-4-.03 Abuse Investigation Procedures | |

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.

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.
- (d) 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.
 - (e) 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.
 - (f) 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.
 - (g) 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.
 - (h) An individual's name may be removed from the Abuse Registry for the reasons set forth in T.C.A. 68-11-1004(e).
 - (i) 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 proposed rules set out herein were properly filed in the Department of State on the 31st day of January, 2001, 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 31st day of May, 2001. (01-19)

DEPARTMENT OF TRANSPORTATION - 1680

Presented herein are proposed amendments of the Tennessee Department of Transportation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Transportation to promulgate this rule without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Tennessee Department of Transportation, Suite 800, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0349, and in the Department of State, Division of Publications, 312 Eight Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, TN 37243, and must be signed by twenty-five (25) persons who 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 the entire text of this rule contact Bob Byrd, Tennessee Department of Transportation, Suite 800, James K. Polk Bldg., 505 Deaderick Street, Nashville, TN 37243, Telephone : (615) 741-1751.

The texts of the proposed amendments are as follows:

SUBSTANCE OF PROPOSED RULES

CHAPTER 1680-2-2 OVERWEIGHT AND OVERDIMENSIONAL MOVEMENTS ON TENNESSEE HIGHWAYS

Paragraph (5) of Rule 1680-2-2-.02, General Information-Permits, is amended by adding a new sentence at the end of the paragraph beginning with the word "However" and ending with the words "Monday through Sunday" as set forth below so that Paragraph (5) as amended shall read:

- (5) Permits will normally be issued for movements during daylight hours only from sunrise to sunset on Monday through Saturday. (Daylight is defined as one-half hour before sunrise to one-half hour after sunset local time as established by the National Weather Service). Time of movement may be further restricted by the issuing authority based upon factors such as type of load, traffic volume, roadway condition and route of move. However, permits issued exclusively for overweight movements may be obtained subject to the restrictions imposed by Rule 1680-2-2-.09 for continuous movement twenty-four (24) hours per day, Monday through Sunday.

Authority: T.C.A. §55-7-205.

Rule 1680-2-2-.02, General Information-Permits, is further amended by adding Paragraph (13) and Paragraph (14) with the following language which shall read:

- (13) Any motor vehicle having a load or vehicle component which extends more than four inches (4") beyond the sides of the vehicle or more than four feet (4') beyond the rear of the vehicle shall have the extremities of the load marked with a red flag, not less than twelve inches (12") square, at each point where a lamp is required by Federal Motor Carrier Safety Regulations under 49 C.F.R. §393.11, Table 1.
- (14) All permit holders requiring travel off of the state highway system are responsible for coordination with the local government having jurisdiction of such other roads.

Authority: T.C.A. §55-7-205.

Rule 1680-2-2-.06, Conditions for Permitting Overwidth Movements, is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

1680-2-2-.06 CONDITIONS FOR PERMITTING OVERWIDTH MOVEMENTS

- (1) Movements over eight feet six inches (8'6") wide but not exceeding ten feet (10') wide: No escorts, special signs, lights and/or markings will be required.
- (2) Movements over ten feet (10') wide but not exceeding twelve feet six inches (12'6") wide:
 - (a) No escort will be required to accompany the movement on the interstate highway system, four-lane highways or two-lane highways with a minimum pavement width (excluding paved shoulders) of twenty-four feet (24').
 - (b) One (1) escort vehicle is required to precede the movement where the minimum pavement width (excluding paved shoulders) is less than twenty-four feet (24').
 - (c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (d) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
 - (e) Escort vehicles shall be signed and marked as hereinafter set out in rule 1680-2-2-.21.
 - (f) At the discretion of the issuing authority, time of movement may be further restricted due to:
 1. Route to be traveled
 2. Weather conditions
 3. Traffic density
 4. Length of daylight hours
- (3) Movements over twelve feet six inches (12'6") wide but not exceeding fourteen feet (14') wide:
 - (a) One (1) escort vehicle is required to follow the movement on the interstate highway system or four-lane highways.
 - (b) One (1) escort vehicle is required to precede the movement on two-lane highways.
 - (c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (d) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
 - (e) Escort vehicles shall be signed and marked as hereinafter set out in rule 1680-2-2-.21.
 - (f) At the discretion of the issuing authority, time of movement may be further restricted due to:

1. Route to be traveled
 2. Weather conditions
 3. Traffic density
 4. Length of daylight hours
- (4) Movements over fourteen feet (14') wide but not exceeding sixteen feet (16') wide:
- (a) Front and rear escort vehicles are required on all highways.
 - (b) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during the movement.
 - (c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (d) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
 - (e) Escort vehicles shall be marked as hereinafter set out in rule 1680-2-2-.21.
 - (f) At the discretion of the issuing authority, time of movement may be further restricted due to:
 1. Route to be traveled
 2. Weather conditions
 3. Traffic density
 4. Length of daylight hours

Authority: T.C.A. §55-7-205.

Rule 1680-2-2-.07, Additional Requirement for Equipment with Blades, is amended by deleting Paragraph (3) in its entirety so that as amended the rule shall read:

1680-2-2-.07 ADDITIONAL REQUIREMENT FOR EQUIPMENT WITH BLADES

- (1) In the interest of safety, equipment such as but not limited to bulldozers with blades or other protruding sharp objects of any kind which create an overwidth exceeding ten feet six inches (10'6") but not exceeding thirteen feet six inches (13'6"), will be loaded in such a manner to place the blade or protruding sharp object to the rear of the hauling equipment.
- (2) No permit will be issued for blades or protruding sharp objects creating width in excess of thirteen feet six inches (13'6").

Authority: T.C.A. §55-7-205.

The Table of Contents title for Rule 1680-2-2-.08, Width in Excess of Fourteen Feet (14'), is amended by deleting the title of the rule in its entirety and substituting the following language so that as amended the title shall read:

1680-2-2-.08 WIDTH IN EXCESS OF SIXTEEN FEET (16')

Authority: T.C.A. §55-7-205.

Rule 1680-2-2-.08, Width in Excess of fourteen feet (14'), is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-2-2-.08 WIDTH IN EXCESS OF SIXTEEN FEET (16')

Generally, movements in excess of sixteen feet (16') will not be permitted. A movement needed in the interest of the public welfare, safety, health or defense may be permitted as provided in Rule 1680-2-2-.04 upon submission of proof of necessity, provided the movement is not considered to be detrimental or unsafe to the traveling public and the highway can accommodate the movement.

Authority: T.C.A. §55-7-205.

Paragraph (1) of Rule 1680-2-2-.12, Time Restrictions, is amended by deleting the paragraph in its entirety and substituting the following language so that as amended the paragraph shall read:

- (1) Overlength, overwidth or overheight movements are normally allowed during daylight hours only from sunrise to sunset on Monday through Saturday. However, because of traffic, movements eight-five feet (85') or greater in length and/or movements in excess of twelve feet six inches (12'6") in width will not be allowed within any city limits or any heavily traveled adjoining commercial or residential area between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. (local time) from Monday through Friday.

Authority: T.C.A. §55-7-205.

The Table of Contents title for Rule 1680-2-2-.14, Conditions for Permitting Movement of Houses, is amended by deleting the title of the rule in its entirety and substituting the following language so that as amended the title shall read:

1680-2-2-.14 CONDITIONS FOR PERMITTING MOVEMENT OF SITE-BUILT HOUSES

Authority: T.C.A. §55-7-205.

Rule 1680-2-2-.14, Conditions for Permitting Movement of Houses, is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-2-2-.14 CONDITIONS FOR PERMITTING MOVEMENT OF SITE-BUILT HOUSES

Notwithstanding any other provision in this chapter to the contrary, special permits may be issued for the movement of site-built houses subject to the following restrictions:

- (1) All proposed site-built house movements over state highways shall be inspected by a representative of the Department within that region. The permit may be issued only after the representative of the Department is satisfied that such a move can be safely made over the proposed route.

- (2) No permits will be issued for movement of site-built houses on the interstate highway system within Tennessee.
- (3) Movements shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
- (4) Two (2) escort vehicles (one in front and one in rear) shall be required. Such vehicles shall be signed and marked as hereinafter set out in rule 1680-2-2-.21.
- (5) Special Permits shall be valid for six (6) days.
- (6) All site-built houses shall be loaded and moved on trailers with steel beams on rubber dollies.
- (7) Prior to the issuance of any permit, the proposed route to be traveled shall be inspected by the proposed mover, and the applicant shall provide proof that all utility companies having above-ground facilities along the proposed route have been notified of the proposed move in writing.
- (8) At the discretion of the issuing authority, time of movement may be further restricted due to:
 1. Route to be traveled
 2. Weather conditions
 3. Traffic density
 4. Length of daylight hours
- (9) At the discretion of the issuing authority, a police escort may be required to accompany the movement.
- (10) Inspection of proposed site-built house movements may be obtained by contacting the following Department of Transportation regional offices.
 - (a) Region I, Maintenance Office
TN Dept. of Transportation
7345 Region Lane
Knoxville, TN 37914
Telephone No. (423) 594-9165
 - (b) Region 2, Maintenance Office
TN Dept. of Transportation
P. O. Box 22368
Chattanooga, TN 37422-2368
Telephone No. (423) 510-1132
 - (c) Region 3, Traffic Office
TN Dept. of Transportation
6601 Centennial Boulevard
Nashville, TN 37243-0360
Telephone No. (615) 350-4336
 - (d) Region 4, Maintenance Office
TN Dept. of Transportation
300 Benchmark Street
Jackson, TN 38301
Telephone No. (901) 935-0174

Authority: T.C.A. §55-7-205.

Rule 1680-2-2-.16, Conditions for Permitting Movement of Houseboats, is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

1680-2-2-.16 CONDITIONS FOR PERMITTING MOVEMENT OF HOUSEBOATS

Houseboats not exceeding eighteen feet (18') in width may be transported on the highways, but any such boat in excess of eight feet six inches (8'6") shall be subject to the fees provided in T.C.A. §55-7-205, and to the following requirements:

- (1) Movements over eight feet six inches (8'6") wide but not exceeding ten feet (10') wide: No escorts, special signs, lights and/or markings will be required.
- (2) Movements over ten feet (10') wide but not exceeding twelve feet six inches (12'6") wide:
 - (a) No escort will be required to accompany the movement on the interstate highway system, four-lane highways or two-lane highways with a minimum pavement width (excluding paved shoulders) of twenty four feet (24').
 - (b) One (1) escort vehicle is required to precede the movement where the minimum pavement width (excluding paved shoulders) is less than twenty-four feet (24').
 - (c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (d) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
 - (e) Escort vehicles shall be signed and marked as hereinafter set out in rule 1680-2-2-.21.
 - (f) At the discretion of the issuing authority, time of movement may be restricted due to:
 1. Route to be traveled
 2. Weather conditions
 3. Traffic density
 4. Length of daylight hours
- (3) Movements over twelve feet six inches (12'6") wide but not exceeding fourteen feet (14') wide:
 - (a) One (1) escort vehicle is required to follow the movement on the interstate highway system or four-lane highways.
 - (b) One (1) escort vehicle is required to precede the movement on two-lane highways.
 - (c) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (d) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.

- (e) Escort vehicles shall be marked as hereinafter set out in rule 1680-2-2-.21.
 - (f) The towing vehicle for fourteen feet (14') wide movements must be at least fourteen feet six inches (14'6") in length.
 - (g) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during movement.
 - (h) At the discretion of the issuing authority, time of movement may be restricted due to:
 - 1. Route to be traveled
 - 2. Weather conditions
 - 3. Traffic density
 - 4. Length of daylight hours
- (4) Movements over fourteen feet (14') wide but not exceeding sixteen feet (16') wide:
- (a) Front and rear escort vehicles are required on all highways.
 - (b) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (c) The front and rear of the movement shall be signed and marked as hereinafter set forth in rule 1680-2-2-.20.
 - (d) Escort vehicles shall be marked as hereinafter set forth in rule 1680-2-2-.21.
 - (e) The towing vehicle must be at least fourteen feet six inches (14'6") in length.
 - (f) The towing vehicles and escort vehicles shall be so equipped as to be in radio communication at all times during movement.
 - (g) Movements shall only be made Monday through Friday between the hours of 9:00 a.m. to 4:00 p.m. (local time) on Saturday from sunrise to sunset. No annual permits shall be issued.
 - (h) At the discretion of the issuing authority, time of movement may be further restricted due to:
 - 1. Route to be traveled
 - 2. Weather conditions
 - 3. Traffic density
 - 4. Length of daylight hours
- (5) Movements over sixteen feet (16') wide but not exceeding seventeen feet (17') wide:
- (a) Front and rear escort vehicles are required on all highways.

- (b) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (c) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
 - (d) Escort vehicles shall be marked as hereinafter set out in rule 1680-2-2-.21.
 - (e) The towing vehicle must be at least fourteen feet six inches (14'6") in length.
 - (f) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during movement.
 - (g) Special permits may be issued for movements Tuesday, Wednesday, and Thursday between the hours of 9:00 a.m. to 4:00 p.m. (local time), and shall only be valid for three (3) of any said week days. No annual permits shall be issued.
 - (h) At the discretion of the issuing authority, time of movement may be further restricted due to:
 - 1. Route to be traveled
 - 2. Weather conditions
 - 3. Traffic density
 - 4. Length of daylight hours
- (6) Movements over seventeen (17') wide but not exceeding eighteen feet (18') wide:
- (a) Three (3) escort vehicles are required on all highways. Two (2) escort vehicles are required to precede the movement. One (1) escort vehicle is required to follow the movement.
 - (b) A flagperson will be required at all bridge structures where the roadway width is less than twenty feet (20').
 - (c) The front and rear of the movement shall be signed and marked as hereinafter set out in rule 1680-2-2-.20.
 - (d) Escort vehicles shall be marked as hereinafter set out in rule 1680-2-2-.21.
 - (e) The towing vehicle must be at least fourteen feet six inches (14'6") in length.
 - (f) The towing vehicle and escort vehicles shall be so equipped as to be in radio communication at all times during movement.
 - (g) Special permits may be issued for movements Tuesday, Wednesday, and Thursday between the hours of 9:00 a.m. to 4:00 p.m. (local time), and shall only be valid for three (3) of the said week days. No annual permits shall be issued.
 - (h) At the discretion of the issuing authority, time of movement may be further restricted due to

1. Route to be traveled
2. Weather conditions
3. Traffic density
4. Length of daylight hours

Authority: T.C.A. §55-7-202; §55-7-205.

Paragraph (1) of Rule 1680-2-2-.24, Fees, is amended by deleting the paragraph in its entirety and substituting the following language so that as amended Paragraph (1) shall read:

- (1) Excessive Width:
 - (a) Not more than ten feet (10'): \$10.00
 - (b) Over ten feet (10') but not more than twelve feet (12'): \$15.00
 - (c) Over twelve feet (12') but not more than fourteen feet (14'): \$25.00
 - (d) Over fourteen feet (14') but not more than sixteen feet (16'): \$30.00
 - (e) Over sixteen feet (16'): \$30.00 plus \$5.00 for each additional foot or fraction thereof greater than seventeen feet (17'), except as otherwise provided in subparagraph (f).
 - (f) For houseboats over seventeen feet (17'): \$2,500.00 plus \$100.00 for each additional inch or fraction thereof greater than eighteen feet (18').

Authority: T.C.A. §55-7-205.

The proposed rules set out herein were properly filed in the Department of State on the 25th day of January, 2001 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 31st day of May, 2001. (01-16)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0400 - Department of Environment and Conservation, Division of Water Pollution Control, Public necessity rules implementing Section 8 of the Inter-Basin Water Transfer Act, , Chapter 1200-4-13, Inter-Basin Water Transfers, 10 T.A.R. (October 2000) - Filed September 29, 2000; effective through March 13, 2001. (09-29)
- 0620 - Department of Finance and Administration, Bureau of TennCare, Public necessity rules dealing with the Revised Consent Decree, rule 1200-13-12-.11 Appeal of Adverse Actions Affecting a TennCare Program Enrollee, 12 T.A.R. (December 2000) - Filed November 2, 2000; effective through April 16, 2001. (11-09)
- 0940 - Department of Mental Health and Developmental Disabilities, Office of the Commissioner, Public necessity rules dealing with the Abuse Registry, cChapter 0940-1-4 Reporting to Statewide Abuse Registry of Suspected Client Abuse, Neglect, Mistreatment 10 T.A.R. (October 2000) - Filed September 21, 2000; effective through March 5, 2001. (09-20)

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RULEMAKING HEARINGS

BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370

There will be a hearing before the Tennessee Board of 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 22nd day of March, 2001.

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-.01, Definitions, is amended by deleting paragraph (13) in its entirety, and substituting instead the following language, so that as amended, the new paragraph (13) shall read:

- (13) Continuing Education (CE) – Education required as a condition of continued licensure.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, and 63-17-124.

Rule 1370-1-.12, Continuing Education, is amended by deleting subparagraphs (1) (a) and (1) (b) in their entirety, and substituting instead the following language, so that as amended, the new subparagraphs (1) (a) and (1) (b) shall read:

- (1) (a) All Speech Language Pathologists and Audiologists must complete a minimum of ten (10) hours of continuing education during each calendar year.
1. Five (5) hours of the ten (10) hour requirement must have been obtained in the licensee's area of practice (Speech Language Pathology or Audiology); and
 2. Five (5) hours of the ten (10) hour requirement may regard either Speech Language Pathology or Audiology.

3. For new licensees, submitting proof of successful completion during the twelve (12) months preceding licensure of all education and training requirements required for licensure in Tennessee, pursuant to Rule 1730-1-.04, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the initial period of licensure.
- (1) (b) The Board does not pre-approve continuing education programs. It is the licensee's responsibility, using his professional judgment, to determine whether or not the continuing education course is applicable and appropriate and meets the guidelines specified in this rule. Continuing education credit will not be allowed for the following:
1. Regular work activities, administrative staff meetings, case staffing/reporting, etc.
 2. Membership or holding office in or participation on boards or committees, or business meetings of professional organizations.
 3. Independent unstructured, or self-structured, learning.
 4. Training specifically related to policies and procedures of an agency.
 5. Seminars, conferences or courses not directly related to Speech Language Pathology or Audiology (i.e. computers, finance, business management, etc.) or inconsistent with the requirements of subparagraph (a).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, 63-17-110, and 63-17-124.

The notice of rulemaking set out herein was properly filed in the Department of State on the 11th day of January, 2001. (01-11)

**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 amendments 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 amendments. 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 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 19th day of March, 2001.

Written comments will be included in the hearing records if received by the close of business March 19, 2001, 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 (March 19, 2001) 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, you may contact Mrs. Vicki Lowe or Mr. Chuck Northington 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 CHANGES

**CHAPTER 1200-3-29
LIGHT-DUTY MOTOR VEHICLE INSPECTION AND MAINTENANCE**

Chapter 1200-3-29 Light-Duty Motor Vehicle Inspection and Maintenance is amended in 13 respects and adding a new rule at number 14 as follow:

Rule 1200-3-29-.02 Definitions is amended by inserting definitions for Check Engine Light, Diagnostic Trouble Codes (DTCs), Federal Test Procedure (FTP), Malfunction Indicator Light (MIL), Onboard Diagnostics (OBD), OBD Data Link Connector (DLC), and Readiness Codes alphabetically within the present list of definitions in the rule and then renumbering the paragraphs of the rule, so that, as amended, the rule shall read:

1200-3-29-.02 DEFINITIONS

As used in this Chapter, all terms not defined herein shall have the meaning given them in Chapter 1200-3-2:

- (1) Air Pollution is any particulate matter or any gas or vapor other than water or any combination thereof including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air.

- (2) Antique motor vehicle is any motor vehicle over twenty-five years old which is owned solely as a collectors' item and is used for participation in club activities, exhibits, tours, parades and similar uses, but in no event for general transportation.
- (3) Carbon dioxide is a compound consisting of the chemical formula (CO₂).
- (4) Carbon monoxide is a compound consisting of the chemical formula (CO).
- (5) Catalytic converter is a pollution control device containing a catalyst for converting automobile exhaust into mostly harmless products.
- (6) Centralized Network means that motor vehicle inspections are conducted by the State and/or a single contractor in an area.
- (7) Certificate of Compliance is a certification issued by a Department vehicle inspector or a fleet vehicle inspector that the motor vehicle identified on the certificate complies with the emission performance and anti-tampering criteria appropriate to the vehicle as specified in this regulation.
- (8) Check Engine Light: for the definition see Malfunction Indicator Light (MIL).
- (9) Contractor is a person, business firm, partnership, city or county government, or corporation with whom the Department has a contract that provides for the operation of one or more Official Inspection Stations.
- (10) Department means the Tennessee Department of Environment and Conservation, Division of Air Pollution Control.
- (11) Department Vehicle Inspector is any person employed by the Tennessee Division of Air Pollution Control and/or contractor who is certified by the Technical Secretary as qualified to perform vehicle emissions performance and anti-tampering inspections.
- (12) Diagnostic Trouble Codes (DTCs) is an alphanumeric code which is set in a vehicle's onboard computer when a monitor detects a condition likely to lead to (or has already produced) a component or system failure or otherwise contribute to exceeding emissions standards by 1.5 times the certification FTP standard.
- (13) Diesel powered motor vehicle is a motor vehicle powered by a compression-ignition internal combustion engine.
- (14) Electric powered motor vehicle is a motor vehicle which uses a propulsive unit powered exclusively by electricity.
- (15) Exhaust emissions are substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.
- (16) Exhaust gas analyzer is a device for sensing the amount of air pollutants, including carbon monoxide and hydrocarbons, in the exhaust emissions of a motor vehicle. For the purpose of this regulation, this shall mean analyzing devices of the nondispersive infrared type or any other analyzing devices that provide equal or greater accuracy as approved by the Technical Secretary.
- (17) Factory-Installed Motor Vehicle Pollutant Control System is a motor vehicle pollution control system installed by the vehicle or engine manufacturer to comply with the United States government motor vehicles emission control laws and regulations.
- (18) Federal Test Procedure (FTP) is the test procedure used to determine the compliance of vehicles with federal emission standards.

- (19) Fleet means 50 or more light-duty motor vehicles owned by the same person or business entity which are in-use, registered in Rutherford, Sumner, Williamson or Wilson counties and not owned or held primarily for the purpose of resale.
- (20) Fleet Inspection Location is any motor vehicle inspection facility operated by a fleet operator holding a valid fleet inspection permit.
- (21) Fleet Inspection Permit is a certificate issued by the Technical Secretary authorizing a fleet operator to conduct motor vehicle inspection in accordance with this regulation and other requirements as determined by the Department.
- (22) Fleet Operator is the person owning a group of motor vehicles which constitute a fleet as defined in this regulation.
- (23) Fleet Vehicle Inspector is any person retained by a fleet operator holding a valid fleet inspection permit and who is certified by the Technical Secretary as qualified to perform vehicle emissions performance and anti-tampering inspections.
- (24) Gasoline inlet restrictor is the leaded fuel nozzle restrictor installed on motor vehicles which was designed for the use of unleaded gasoline only.
- (25) Gasoline powered motor vehicles is any motor vehicle powered by spark-ignition internal combustion engine.
- (26) GVWR is a term defining the gross vehicle weight as determined from the combined manufacturer vehicle and maximum load rating.
- (27) Heavy-duty motor vehicle is any motor vehicle having a combined manufacturer vehicle and maximum loading rate (GVWR) to be carried thereon in the excess of 8500 pounds (3855 kilograms).
- (28) Hydrocarbon is any organic compound consisting predominantly of carbon and hydrogen.
- (29) Idle speed means the unloaded engine speed of a motor vehicle when the accelerator pedal is fully released. In a vehicle equipped with an automatic transmission, this is with the drive selector in neutral or park. In a vehicle equipped with a manual transmission, this is with the gear selector in neutral and the clutch fully engaged. In all vehicles, the engine operated accessories shall be turned off.
- (30) Internal combustion engine is any engine in which the combustion of gaseous, liquid or pulverized solid fuel takes place within one or more cylinders, or any engine with one or more combustion chambers.
- (31) Light-duty motor vehicle is any motor vehicle having a combined manufacturer vehicle and maximum load rating to be carried thereon (GVWR) of more than 8500 pounds (3855 kilograms).
- (32) Malfunction Indicator Light (MIL) is known as the Check Engine light. The Malfunction Indicator Light is illuminated on the dashboard when conditions exist likely to result in emission exceeding FTP standards by 1.5 time or worse. Alternatives include "Service Engine Soon," as well as an unlabeled icon of an engine.
- (33) Manufacturers Idle-speed Specification is the engine idle speed specified for a particular motor vehicle as printed on the engine compartment emissions system data plate or in the owners manual.
- (34) Model Year means the annual production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such production ends. If the manufacturer does not designate a production period, the year with respect to such vehicle or engines shall mean the twelve (12) month period beginning January of the year

in which production thereof begins. The model year for a motor vehicle constructed by other than the original manufacturer shall be assigned by the Technical Secretary.

- (35) Motor vehicle is any self-propelled vehicle used for transporting persons or commodities on public roads.
- (36) Motor Vehicle Regulatory License is the annual motor vehicle license required as a condition for legal operation of certain classes of motor vehicles.
- (37) Motorcycle is any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, and having a curb weight of 2000 pounds (907 kilograms) or less.
- (38) New motor vehicle is any motor vehicle that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin.
- (39) Official Inspection Station means a facility operated by the Department and/or contractor to conduct test only vehicle inspections pursuant to this regulation, in a Centralized Network.
- (40) Onboard Diagnostics (OBD) is a system of vehicle component and condition monitors controlled by a central, onboard computer designed to signal the motorist when conditions exist which could lead to a vehicle's exceeding its certification standards by 1.5 times the FTP standard.
- (41) OBD Data Link Connector (DLC) is the interface which is usually located under the dashboard on the driver's side between a vehicle's OBD computer and the OBD scanner. Connecting an OBD scanner to the DLC allows inspectors and vehicle repair technicians to read the readiness status of the vehicle's various onboard monitors as well as any diagnostic trouble codes.
- (42) Pollution Control Device is the equipment designed by the manufacturer for installation on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification on a motor vehicle which causes a reduction of pollutants emitted from the motor vehicle.
- (43) Readiness codes are status flags stored by a vehicle's onboard computer which is different from the DTC in that it does not indicate a vehicle fault, but rather whether or not a given monitor has been run (i.e. whether or not the component or system in question has been checked to determine if it is functioning properly).
- (44) RPM is a term describing the engine crankshaft revolutions per minute.
- (45) Tampering means to remove, render inoperative, cause to be removed, or make less operative any emission control device, unless such removal or act to render inoperative or less operative is for the purpose of motor vehicle disposal or salvage operation.
- (46) Technical Secretary is the Technical Secretary of the Air Pollution Control Board of the State of Tennessee or his designated representative.
- (47) Vehicle Exhaust System mean all devices, equipment and systems which transport exhaust emissions from the exhaust ports of the motor vehicle engine to the atmosphere.
- (48) Wheel Tax is the annual commercial vehicle tax required as a condition for the legal operation of certain classes of motor vehicles.

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

Subparagraph (g) of paragraph (1) of rule 1200-3-29-.04 Exemption from Motor Vehicle Inspection Requirements is amended by adding the words “or one year from initial registration” so that, as amended, the subparagraph (g) shall read:

- (g) new motor vehicles being registered for the first time or one year from initial registration.

Subparagraph (a) of paragraph (1) of Rule 1200-3-29-.05 Motor Vehicle Emission Performance Test Criteria is amended by adding the words “For 1975 to 1995 model vehicles, if” at the beginning of the subparagraph so that, as amended, the subparagraph (a) shall read:

- (a) For 1975 to 1995 model vehicles, if the vehicle exhaust system leaks in such a way as to dilute the exhaust emissions being sampled by the exhaust gas analyzer; the sum of carbon monoxide and carbon dioxide concentrations recorded for idle speed reading from an exhaust outlet must not be less than 6%.

Paragraph (2) of rule 1200-3-29-.05 Motor Vehicle Emission Performance Test Criteria is amended by inserting between “Vehicles” and “which” in the opening of the paragraph the words “models 1975 to 1995” so that, as amended, the opening shall read:

- (2) Vehicle models 1975 to 1995 which have idle speed emission values which exceed the test standards specified in Table I shall fail the emission performance test.

Rule 1200-3-29-.05 Motor Vehicle Emission Performance Test Criteria is amended by renumbering the present paragraph (3) to paragraph (4) and inserting a new paragraph (3) so that, as amended, paragraphs (3) and (4) shall read:

- (3) All 1996 and newer vehicles shall be subject to an OBD inspection. An OBD check shall consist of two parts. A visual check of the MIL, and an electronic examination of the OBD computer itself. The vehicle passes when the bulb check test is completed, MIL is not lit for any DTCs and all required readiness codes are set.
- (4) When a motor vehicle is equipped with other than the original engine or when a motor vehicle has been constructed, modified, customized or altered in such a way so that the model year cannot be clearly determined, the vehicle shall be classified for purposes of the emission performance test by the model year of the chassis.

The opening to paragraph (1) of rule 1200-3-29-.06 Motor Vehicle Anti-tampering Test Criteria is amended by inserting between “vehicle” and “subject” the words “with a model year of 1975 to 1995” so that, as amended, the opening to the paragraph (1) shall read:

- (1) Each vehicle with a model year of 1975 to 1995 subject to an emission performance test is also subject to a visual anti-tampering inspection under this rule and shall comply with the following minimum anti-tampering requirements:

Rule 1200-3-29-.06 Motor Vehicle Anti-tampering Test Criteria is amended by adding a new paragraph (2) so that, as amended, the new paragraph (2) shall read:

- (2) Each vehicle with a model year of 1996 and newer is subject to an anti-tampering test, and shall comply at a minimum with a visual inlet restrictor check and a gas cap pressure test.

Paragraphs (1) and (2) of rule 1200-3-29-.07 Motor Vehicle Emissions Performance Test Methods are amended by adding at the beginning of each paragraph the words “For vehicles with model years 1975 to 1995” so that, as amended, the paragraphs (1) and (2) shall read:

- (1) For vehicles with model years 1975 to 1995, the motor vehicle emissions performance test shall consist of the sampling of exhaust emission at idle speed and measurement of CO₂ dilution, CO concentration and HC concentration.
- (2) For vehicles with model years 1975 to 1995, sampling of exhaust emission shall consist of measurement of CO₂ dilution, CO concentration and HC concentration during idle operation using an approved exhaust gas analyzer. Measurements taken during the initial idle phase may be succeeded by measurements taken during a second idle phase which has followed an engine conditioning phase consisting of engine operation at approximately 2500 RPM for approximately 20 seconds. The lowest emission readings from either of these idle speed test phases shall be used to determine pass or failure of the emissions performance test.

Rule 1200-3-29-.07 Motor Vehicle Emissions Performance Test Methods is amended by adding a new paragraph (3) so that, as amended, the new paragraph shall read:

- (3) For vehicles with a model year of 1996 and newer, an onboard diagnostic test shall be performed. All vehicles that have an accessible OBD system shall be tested. The results of the test shall be used to determine pass or failure of the vehicle.

Paragraph (1) of rule 1200-3-29-.08 Motor Vehicle Anti-Tampering Test Methods is amended by adding at the beginning of the opening to the paragraph the words "For vehicles with model years 1975 to 1995", so that, as amended, the opening shall read:

- (1) For vehicles with model years 1975 to 1995, the motor vehicle anti-tampering test shall be verified by the Department vehicle inspector and consist of the following elements:

Rule 1200-3-29-.08 Motor Vehicle Motor Vehicle Anti-Tampering Test Methods is amended by adding a new paragraph (2) so that, as amended, the new paragraph (2) shall read:

- (2) Each vehicle with a model year of 1996 and newer is subject to an anti-tampering test, and shall comply at a minimum with a visual inlet restrictor check and a gas cap pressure test. The anti-tampering test shall consist of the following elements:
 - (a) Vehicle shall be visually checked to see if the appropriate gas cap is securely in place.
 - (b) If the gas cap is present, it shall be removed and a gas cap pressure test shall be performed to assure the cap is working properly. If the gas cap fails the pressure test, it shall result in a failure of the anti-tampering test. While the gas cap is removed, the gasoline inlet restrictor on the vehicle shall be visually check to see if it has been damaged or removed. Tampering to the gasoline fuel inlet restrictor shall constitute a failure of the anti-tampering test.

Paragraph (2) of the present rule 1200-3-29-.10 Motor Vehicle Inspection Fee is amended by renumbering the paragraph to paragraph (3), deleting "Paragraph 1200-3-29-.08(1)" at the two sites in this paragraph, and adding "paragraphs 1200-3-29-.08(1) and (2)" in their place

Paragraph (2) of rule 1200-3-29-.10 Motor Vehicle Inspection Fee is amended by deleting "four dollars (\$4.00)" and inserting in its place "five dollars (\$5.00)" so that, as amended, the paragraph shall read:

- (2) There shall be a fee of five dollars (\$5.00) for each Certificate of Compliance supplied to licensed fleet inspectors for issuance to motor vehicles which comply with the testing provisions of this regulation.

Chapter 1200-3-29 Light-Duty Motor Vehicle Inspection and Maintenance Regulations is amended by adding a new rule 1200-3-29-.11 Waiver Provisions so that the new rule shall read as follows:

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1200-3-29-.11 Waiver Provisions

1200-3-29-.11 WAIVER PROVISIONS

- (1) The purpose of this rule is to allow a person to operate a motor vehicle which fails to meet the applicable motor vehicle maximum allowable emission values as specified in Rule 1200-3-29-.05 (2), provided the department has issued to the owner of the motor vehicle a waiver.
- (2) A waiver issued pursuant to this rule shall relieve the owner of a motor vehicle from responsibility for taking any further action to reduce exhaust emissions from the motor vehicle until the motor vehicle is next due for inspection, pursuant to Rule 1200-3-29-.03.
- (3) Any owner of a motor vehicle may be eligible and may apply to the department for a waiver pursuant to this rule if:
 - (a) An application for a waiver is submitted to a department representative at an inspection site designated by the department;
 - (b) The vehicle passed the tampering portion of the vehicle inspection;
 - (c) All of the exhaust emissions components appropriate to make, model, year, series, and engine size are in place and visually operating;
 - (d) The vehicle failed the first initial emissions test and subsequent retest after repairs;
 - (e) The owner of the vehicle has spent the required amount, pursuant to part 1 or 2 of this subparagraph, in parts and/or labor as an attempt to bring the vehicle into compliance with the motor vehicle emission values as specified in Rule 1200-3-29-.05 (2).
 1. For 1975–1980 model year vehicles – the minimum expenditure requirement is \$75.00. All repairs must be appropriate and/or related to the cause of the test failure. This expenditure includes parts and labor, as specified in part 3.
 2. For 1981 to 1995 model year vehicles – the minimum expenditure requirement is \$200.00. All repairs must be appropriate and/or related to the cause of the test failure. This expenditure includes parts and labor, as specified in part 3.
 3. The cost of labor can be applied towards the expenditure amount only if the repairs were performed by a certified repair technician (National Institute for Automotive Service Excellence[ASE] certified in engine repair and engine performance). Repairs performed by non-technicians (e.g., owners) may only apply the cost of parts towards the expenditure.
 - (f) Documentation of repairs must be provided to the department. Documentation shall include receipts itemized, dated and include the name of each part, part number, and manufacturer.
 - (g) Emission related repairs were performed on the vehicle sixty (60) days before or after the initial failed exhaust emissions inspection; and

- (h) Proof of county residence is provided to the department. (Example: Driver's License and/or vehicle registration)
- (4) The owner of a motor vehicle still within the failed vehicle's warranty period shall use all available warranty coverage to have repairs made that are directed toward correcting the cause of the motor vehicle's inspection failure prior to applying for a waiver and provide support documentation pursuant to subparagraph (a) or (b) of this paragraph.
 - (a) Documentation indicating that any available warranty coverage has been used to have the repairs made that are directed toward correcting the cause of the motor vehicle's failure to pass the motor vehicle inspection shall be provided to the Department; or
 - (b) A written denial of warranty coverage for the needed repairs from the manufacturer or authorized dealer shall be provided to the Department.
- (5) Prior to the issuance of a waiver, the department shall perform a visual (underhood) inspection. This inspection will be performed to determine that emission related repairs have been completed and verify that the minimum expenditure has been met. During the visual inspection, if any tampering with the emission control system is discovered, a waiver cannot be granted.
- (6) The waiver shall be valid for one year or until the next registration expiration date, whichever is sooner.
- (7) A waiver shall be granted to the owner of a motor vehicle provided the requirements of this rule have been fulfilled.
- (8) Upon receiving a waiver from the department, the motor vehicle owner shall be exempt from the requirements of paragraph (6) in rule 1200-3-29-.03 within the time period prescribed in paragraph (6) of rule 1200-3-29-.11.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2001. (01-20)

DIVISION OF SUPERFUND

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. 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 at the Tennessee Department of Environment and Conservation, Chattanooga Environmental Assistance Center, First Floor Auditorium, 540 McCallie Street, Chattanooga, TN 37402 on March 20, 2001 at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-1-13
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

AMENDMENTS

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by adding the following site to the list, such addition being made in a manner so that the entire list remains in numerical order:

| Site Number | Site Name |
|----------------------|---|
| Hamilton County (33) | |
| 33-660 | Electro-Lite Battery Chattanooga, TN |

Authority: T.C.A. §§68-212-206(e) and 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2001. (01-21)

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of an amendment to rules 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 5th Ave. N., Nashville, TN at 2:30 p.m. (CDT) on the 1st day of May, 2001.

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, 1st Fl., Cordell Hull Building, 425 5th Avenue N., 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 5th Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 1200-30-1-.12, Continuing Education, is amended by adding the following language as an introductory sentence, and is further amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new introductory sentence and the new paragraph (1) shall read:

1200-30-1-.12 CONTINUING EDUCATION. Each licensee is required to complete thirty (30) contact hours of alcohol and drug abuse continuing education during each calendar year (January 1 to December 31).

- (1) Continuing education for new licensees - For new licensees, submitting proof of successful completion of all education and training requirements required for licensure in Tennessee, pursuant to subparagraphs 1200-30-1-.04 (1) (c) and 1200-30-1-.05 (1) (a), shall be considered proof of sufficient preparatory education to constitute continuing education credit for the calendar year in which such education and training requirements were completed.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 68-24-605, and 68-24-606.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of January, 2001. (01-10)

**STANDARDS FOR PRESCRIBED CHILD CARE CENTERS
CHAPTER 1200-8-2**

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 5th Avenue North, Nashville, Tennessee 37247-0508 at 9:00 a.m. C.T. on the 22nd day of March, 2001.

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 5th Avenue North, Nashville, Tennessee, Telephone 615-741-7586.

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

SUMMARY OF PROPOSED RULES

1200-8-2-.01 DEFINITION OF GENERAL TERMS USED THROUGHOUT

1200-8-2-.02 LICENSING PROCEDURES

- (1) Licensure Information
- (2) Licensure Application and Fees
- (3) Change of Ownership
- (4) Licensure Renewal

1200-8-2-.03 DISCIPLINARY PROCEDURES

- (1) Suspending or Revoking a License
- (2) Sanctions

1200-8-2-.04 ADMINISTRATION

- (1) Governing Body
- (2) Policies and Procedures
- (3) Personnel

1200-8-2-.05 ADMISSIONS, DISCHARGES AND TRANSFERS

- (1) Admissions and Assessment Policies

1200-8-2-.06 BASIC SERVICES

- (1) Nursing Services
- (2) Physician Services
- (3) Educational Services
- (4) Nutritional Services
- (5) Pharmaceutical Services
- (6) Rehabilitation Services
- (7) Psychologist/Social Work Services
- (8) Infection Control
- (9) Performance Improvement

- (10) Transportation Services
- (11) Recreational Services
- (12) Environmental Services
- (13) Laundry Services

1200-8-2-.07 BUILDING STANDARDS

- (1) Building Codes

1200-8-2-.08 LIFESAFETY

- (1) Regulations

1200-8-2-.09 INFECTIOUS AND HAZARDOUS WASTE

- (1) Written Policies and Procedures

1200-8-2-.10 RECORDS AND REPORTS

- (1) Children's Records

1200-8-2-.11 CHILD, PARENT OR RESPONSIBLE PARTY'S RIGHTS

1200-8-2-.12 PROCEDURES FOR THE WITHHOLDING OF RESUSCITATION

1200-8-2-.13 DISASTER PREPAREDNESS

Authority: T.C.A. §§4-5-202, 4-5-206, 68-11-201, 68-11-202, 68-11-204, 68-11-206 through 68-11-210, 68-11-213, 68-11-216, 68-11-222 and 68-11-224.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of January, 2001. (01-09)

There will be a hearing before the Tennessee Board of Dispensing Opticians to consider the promulgation of an amendment to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-14-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 19th day of March, 2001.

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

AMENDMENT

Rule 0480-1-.12, Continuing Education, is amended by deleting subparagraph (2) (a) and part (2) (d) 6., but not its subparts, in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (2) (e), (2) (f), and (2) (g), so that as amended, the new subparagraph (2) (a) and part (2) (d) 6., but not its subparts, and the new subparagraphs (2) (e), (2) (f), and (2) (g) shall read:

- (2) (a) The Board will accept any dispensing optician clinic, workshop, seminar or lecture attended in Tennessee or attended at any national or regional meeting not in Tennessee for continuing education (CE) credit if it is in accordance with the following guidelines:
- (2) (d) 6. Course approval procedure for course providers - The subject matter, instructor and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course, documentation which includes all of the following items which must be resubmitted if changes are requested after receipt of approval from the Board:
- (2) (e) Under no circumstances shall continuing education courses be approved after the thirty (30) day period has occurred as provided in part (2) (d) 6.
- (2) (f) Notwithstanding the provisions of subparagraph (a), out-of-state continuing education providers may seek course approval if they are a dispensing optician regulatory agency or association from a state that borders Tennessee.
- (2) (g) Course approval procedure for individual licensees
 1. Notwithstanding the provisions of subparagraph (a), any licensee may seek approval to receive credit for successfully completing continuing education courses by complying with the provisions of part (2) (d) 6., subparts (2) (d) 6. (i) through (vii) and subpart (2) (d) 6. (ix).
 2. To retain course approval, the licensee must submit a course evaluation form, supplied by the Board, to the Board's administrative office within thirty (30) days after successfully completing the course.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, and 63-14-106.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of January, 2001. (01-15)

**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 and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-29-101, et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A., Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Bldg. located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 26th day of March, 2001.

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
GENERAL RULES GOVERNING CERTIFIED PROFESSIONAL MIDWIVES**

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

- (1) Administrative Office - The office of the administrator assigned to the Board and Council located on the First Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee 37247-1010.
- (2) Administrative Revocation - An Administrative action taken pursuant to Rule 1050-5-.09 when a certificate holder fails to timely renew his/her certificate and all other options available have been ignored. A certificate holder whose certificate has been administratively revoked has been provided an opportunity for a hearing and as such is officially uncertified and cannot lawfully continue to practice in Tennessee. Certificates administratively revoked may be reinstated upon meeting the conditions stated in Rule 1050-5-.09.
- (3) CPR - Cardiopulmonary resuscitation.
- (4) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Council receives administrative support.
- (5) NARM - The North American Registry of Midwives.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-29-101, et seq.

1050-5-.02 SCOPE OF PRACTICE. The scope of midwifery practice shall be as set forth in Tennessee Code Annotated, Sections 63-29-102 (9) and (10) and 63-29-115. As an aid to interpretation and application of that scope of practice, the Council adopts, as if fully set out herein, and as it may from time to time be amended, the “Practice Guidelines” issued by the Tennessee Midwives Association. In the event that the “Practice Guidelines are in conflict with any portion of Tennessee Code Annotated §§ 63-29-101, et seq. (Midwifery Practice Act) the “Midwifery Practice Act” shall govern. Information on how to acquire a copy of the “Practice Guidelines” may be obtained by contacting the Board’s administrative office.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-102, 63-29-115 and 63-29-116.

1050-5-.03 RESERVED.

1050-5-.04 RESERVED.

1050-5-.05 CERTIFICATION PROCESS.

- (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. One (1) of the required letters shall be submitted from a health care professional on the signator's letterhead. No letters from family members or relatives shall be accepted.
- (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.
- (f) An applicant shall the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 - 3. Loss or restriction of licensure/certification.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
 - 5. Failure of any licensure or certification examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-108, 63-29-109 and 63-29-116.

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 |
- (7) All fees must be submitted to the Administrative Office by cashier's check, personal check or money order, and made payable to the Council of Certified Professional Midwifery. Checks must be drawn on a United States Bank.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-142, 63-9-101 and 63-29-116.

1050-5-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL. Review, approval and denial of all applications under this chapter of rules shall be governed by rule 1050-2-.05

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-9-101, and 63-29-116.

1050-5-.08 RESERVED.

1050-5-.09 CERTIFICATION RENEWAL. 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 (within sixty [60] days of the due date for renewal) shall have their certificates processed for administrative revocation by the Council.
- (4) Certificates administratively revoked pursuant to this rule may not be reinstated and a new application for

certification must be filed.

- (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 inactive status affidavit pursuant to rule 1050-5-.11 which will effectively inactivate the certificate as of the date such affidavit 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.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-9-101, 63-29-109, 63-9-111 and 63-29-116.

1050-5-.10 RESERVED.

1050-5-.11 INACTIVE STATUS AND REACTIVATION.

- (1) 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:
 - (a) Obtain from, complete and submit to the Council's administrative office an inactive status affidavit form.
 - (b) Submit any documentation which may be required by the form to the Council's administrative office.
 - (c) Upon successful application for inactive status with completion and receipt of all proper documentation to the Council's satisfaction, the Council shall register the Certificate as inactive. Any person who has an inactive certificate may not practice as a CPM-TN.
- (2) Reactivation - Any certificate holder whose certification has been placed in inactive status 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 acquiring inactive status, 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 inactivation of certification 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 inactivation 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, 63-1-107, 63-1-111, 63-9-101, 63-29-109, 63-29-110, and 63-29-116.

1050-5-.12 CONTINUING EDUCATION.

- (1) To be eligible for renewal of certification the continuing education requirements imposed by NARM must be complied with and attestation of compliance submitted at renewal time.
- (2) Having successfully completed the certification requirements of NARM as provided in rule .05 of this chapter shall be considered proof of sufficient education to constitute compliance with continuing education requirements for the initial three (3) year certification period for individuals who are certified by the Council during their first three years of certification with NARM.
- (3) All certificate holders must retain independent documentation acceptable to NARM of completion of all continuing education hours. This documentation must be retained for a period of four (4) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process.
- (4) Anyone who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-12-.15.
- (5) Anyone who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-12-.15 and may not be allowed to renew certification.
- (6) Education hours obtained as a result of compliance with the terms of Council and/or Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-109, and 63-29-116.

1050-5-.13 PROFESSIONAL ETHICS. All certificate holders shall comply with the codes of ethics adopted by the Tennessee Midwives Association, the North American Registry of Midwives, and the Midwives Association of North America except to the extent that they do not conflict with the laws of the state of Tennessee or the rules of the Council and/or Board. If the codes of ethics conflict with state law or rules, the state law or rules govern the matter. Violation of the codes of ethics or state law or rules may subject a certificate holder to disciplinary action

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-115 and 63-29-116.

1050-5-.14 RESERVED.

1050-5-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

- (1) Upon a finding by the Council and Board that a certificate holder has violated any provision of the T.C.A. § 63-29-

114 or the rules promulgated pursuant thereto, the Council and Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense;

- (a) Warning Letter - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a certificate holder on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) Certificate Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the certificate previously issued.
 - (e) Revocation
 - 1. Administrative Revocation - An administrative action taken pursuant to rule 1050-5-.09 when a certificate holder fails to timely renew and all other available options have been ignored. Certificates administratively revoked may not be reinstated.
 - 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 certificate previously issued. The Council and/or Board, in their discretion, may allow reinstatement of a revoked certificate upon conditions and after a period of time which they deem appropriate. No petition for reinstatement and no new application for certification from a person whose certificate was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
 - (f) Conditions - Any action deemed appropriate by the Council and/or Board to be required of a disciplined certificate holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked certificate.
 - (g) Civil Penalty - A monetary disciplinary action assessed by the Council and/or Board pursuant to the procedures and schedules contained in paragraph (3).
- (2) Civil Penalties
- (a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.
 - (b) Schedule of Civil Penalties.
 - 1. A "Type A" Civil Penalty may be imposed whenever the Council finds a person who is required to be licensed, certified, permitted, or authorized by the Council, guilty of a willful and knowing violation of the T.C.A. §§ 63-29-101, et seq., or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, willfully and knowingly practicing without a certificate is one of the violations for which a "Type A" Civil Penalty is assessable.
 - 2. A "Type B" Civil Penalty may be imposed whenever the Council finds the person required to be

licensed, certified, permitted, or authorized by the Council is guilty of a violation T.C.A. §§ 63-29-101, et seq., or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.

3. A “Type C” Civil Penalty may be imposed whenever the Council finds the person required to be licensed, certified, permitted, or authorized by the Council is guilty of a violation of T.C.A. §§ 63-29-101, et seq., or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.

(c) Amount of Civil Penalties.

1. “Type A” Civil Penalties shall be assessed in the amount of not less than \$500 nor more than \$1000.
2. “Type B” Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. “Type C” Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties.

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Council during consideration of any Notice of Charges. In addition, the Council may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Council may consider the following factors:
 - (i) Whether the amount imposed will be substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, T.C.A.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-134, 63-9-101, 63-29-114 and 63-29-116.

1050-5-.16 REPLACEMENT CERTIFICATES - A Certificate holder whose “artistically designed” Certificate has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 1050-5-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-9-101, and 63-29-116.

1050-5-.17 CHANGE OF NAME AND/OR ADDRESS.

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

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-108, 63-9-101, and 63-29-116.

0880-12-.18 RESERVED.

0880-12-.19 COUNCIL OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS.

- (1) The Council shall annually elect from its members the following officers:
 - (a) Chairperson - who shall preside at all meetings of the Council; and
 - (b) Vice-Chairperson – who shall preside at meetings in the absence of the Chairperson and who along with the Council Administrator shall be responsible for correspondence from the Council.
- (2) The Council has the authority to select a Council consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
 - (a) Review complaints and recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
 - (b) Recommend whether and upon what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the Council and Board before it becomes effective.
 - (c) Undertake any other matter authorized by a majority vote of the Council and/or Board.
- (3) Records and Complaints
 - (a) Minutes of the Council meetings and all records, documents, applications and correspondence will be maintained in the Administrative Offices.
 - (b) All requests, applications, notices, other communications and correspondence shall be directed to the

Administrative Office. Any requests or inquiries requiring a Council decision or official Council action except documents relating to disciplinary actions, or hearing requests must be received fourteen (14) days prior to a scheduled meeting and will be retained in the Administrative Office and presented to the Council at the Council meeting. Such documents not timely received shall be set over to the next Council meeting.

- (c) All records of the Council, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Administrative Office during normal business hours.
 - (d) Copies of public records shall be provided to any person upon payment of a fee.
 - (e) All complaints should be directed to the Division's Investigations Section.
- (4) The Council members or the Consultant are individually vested with the authority to do the following acts:
- (a) Review and make determination on certification, renewal and reactivation of applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Council and Board.
 - (b) Serve as Consultant to the Division to decide the following:
 - 1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 - 2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Council and Board.
- (5) The Council shall designate one (1) of its members or the Consultant to make determinations pursuant to Rule 1360-4-1-.18.
- (6) Requests for Verification of Licensure for a certified midwife desiring to practice in another state must be made in writing to the Administrative Office.
- (7) Declaratory Orders - The Council adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Council shall be addressed by the Council pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Administrative Office.

Authority: T.C.A. §§4-5-202, 4-5-105, 4-5-223, 4-5-224, 63-1-115, 63-1-117, 63-9-101, 63-29-106, and 63-29-116.

REPEALS

1050-5-.01, RESERVED, is repealed.

1050-5-.02, RESERVED, is repealed.

1050-5-.03, RESERVED, is repealed.

1050-5-.04, CERTIFICATION APPLICATIONS, REQUIREMENTS, AND EXEMPTIONS, is repealed.

1050-5-.05, RESERVED, is repealed.

1050-5-.06, FEES, is repealed.

1050-5-.07, RESERVED, is repealed.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-29-101, et seq.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of January, 2001. (01-18)

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ORDER FORM

Please send the subscription(s) indicated below. A check in the amount of \$_____ is enclosed.

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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 January 2, 2001 and ending January 31, 2001.

A handwritten signature in black ink that reads 'Riley C. Darnell'. The signature is written in a cursive style with a large initial 'R'.

RILEY C. DARNELL
Secretary of State