

# TAAAR



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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

#### PETITION FOR DECLARATORY ORDER NOTICE OF HEARING

Pursuant to Tennessee Code Annotated section 4-5-224, the Drycleaner Environmental Response Board gives the following notice of hearing on a petition for declaratory order:

1. Petitioner's Name: Ensafe, Inc.

2. Petitioner's Attorney:

Name: G. Scott Thomas

Address: Bass, Berry & Sims  
Amsouth Center, Suite 2700  
315 Deaderick Street  
Nashville, Tennessee 37238-3001

Telephone: (615) 742-6200

3. Organization, if any, that the Petitioner represents:

Name: N/A

Address: N/A

4. Summary of the relief requested:

Petitioner requests a declaratory order from the Drycleaner Environmental Response Board that the denial of the Application for Reimbursement from the Drycleaner Environmental Response Fund by the Department of Environment and Conservation, Division of Superfund, Drycleaner Environmental Response Program, was erroneous and should be reversed.

Petitioner requests that the Drycleaner Environmental Response Board conclude that the Application for Reimbursement was submitted in compliance with Rule 1200-1-17-.08(f), which requires that applications for reimbursement be received by the Drycleaner Environmental Response Program within one year from the date of performance of the work giving rise to the application.

5. Summary of the statute or regulation that the agency is called upon to interpret or upon which it is to rule:

Tenn. Code Ann. §§ 68-217-105, 68-217-107

Rule 1200-1-17-.08(7)(f), *Official Compilation, Rules and Regulations of the State of Tennessee*

Tennessee Code Annotated sections 68-217-105 and 68-217-107 provide the Drycleaner Environmental Response Board the authority to promulgate rules which establish a process to govern the expenditure of moneys from the Drycleaner Environmental Response Fund for reimbursement of approved investigative or remedial response costs. Pursuant to this authority, the Drycleaner Environmental Response Board has promulgated Rule 1200-1-17-.08(7)(f), which provides as follows:

In order to be eligible for payment from the Fund, an application for payment must be received within one year from the date of performance of the work giving rise to the costs which are the subject of the application for payment.

A contested case hearing has been scheduled for March 11, 2002, 9:00 a.m. central time, 17<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the Office of the Secretary of State, Publications Division, on this the 27<sup>th</sup> day of November, 2001. (11-30)



**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180****ANNOUNCEMENT OF FORMULARATE 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 9.00 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 January 2002 is 9.33 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 5.33 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 November, 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	EFFECTIVE DATE
11-10	Nov 6, 2001	1395 TN Bureau of Investigation	Proposed Rules	New chapter	Chapter 1395-1-2 <i>Division of TN Incident Based Reporting System Program</i> 1395-1-2-.01 Purpose and Scope 1395-1-2-.02 Definitions 1395-1-2-.03 TIBRS Program Certification Requirements 1395-1-2-.04 Data Submission Procedures 1395-1-2-.05 Error Reports 1395-1-2-.06 Non-Entering Agency Agreement Requirements 1395-1-2-.07 Sanctions for Non-Compliance with TIBRS Program Requirements	David Jennings Professional Standards Unit TN Bureau of Investigation 901 R.S. Gass Blvd Nashville, TN 37216-2639 (615) 744-4204	March 30, 2002
11-11	Nov 6, 2001	1395 TN Bureau of Investigation	Proposed Rules	New Chapter	Chapter 1395-1-3 <i>Division of TN Instant Check System Program</i> 1395-1-3-.01 Purpose and Scope 1395-1-3-.02 Definitions 1395-1-3-.03 TICS Program in General 1395-1-3-.04 TICS Program Instant Check Request Requirements 1395-1-3-.05 Denials 1395-1-3-.06 Gun Shows 1395-1-3-.07 Auctions	David Jennings Professional Standards Unit TN Bureau of Investigation 901 R.S. Gass Blvd Nashville, TN 37216-2639 (615) 744-4204	March 30, 2002
11-12	Nov 6, 2001	1395 TN Bureau of Investigation	Proposed Rules	New chapter	Chapter 1395-1-4 <i>Criminal Intelligence Unit Automated Criminal Intelligence System of TN Program</i> 1395-1-4-.01 Statement of Intent and Application 1395-1-4-.02 Definitions 1395-1-4-.03 Access Criteria 1395-1-4-.04 Dissemination of Information 1395-1-4-.05 Information Retention 1395-1-4-.06 Inquiry Procedure 1395-1-4-.07 TN Missing Children Clearinghouse	David Jennings Professional Standards Unit TN Bureau of Investigation 901 R.S. Gass Blvd Nashville, TN 37216-2639 (615) 744-4204	March 30, 2002
11-13	Nov 6, 2001	1395 TN Bureau of Investigation	Proposed Rules	New chapter	Chapter 1395-1-6 <i>Production of Documents and Testimony</i> 1395-1-6-.01 Definitions. 1395-1-6-.02 Purpose. 1395-1-6-.03 Scope. 1395-1-6-.04 Civil Actions. 1395-1-6-.05 Regulatory Agencies 1395-1-6-.06 Expenses. 1395-1-6-.07 Certification	David Jennings Professional Standards Unit TN Bureau of Investigation 901 R.S. Gass Blvd Nashville, TN 37216-2639 (615) 744-4204	March 30, 2002

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-15	Nov 8, 2001	Finance And Administration	Proposed Rules	Amendments	<p>Chapter 0620-3-3  <i>Personal, Professional and Consulting Service Contracts</i></p> <p>0620-3-3-.01 Applicability  0620-3-3-.02 Office of Contracts Review  0620-3-3-.03 Procurement Methods  0620-3-3-.04 Protest Procedures  0620-3-3-.05 Contract Form  0620-3-3-.06 Contract Approval.  0620-3-3-.07 General Requirements  0620-3-3-.08 Special Cases  0620-3-3-.09 Delegated Authority  0620-3-3-.10 Contract Management  0620-3-3-.11 Contract Termination  0620-3-3-.12 Exceptions To Rules  0620-3-3-.13 Appendix I of  Rule 0620-3-3-.04.  Appendix I of  Rule 0620-3-3-.06  Appendix II of  Rule 0620-3-3-.04</p>	<p>Mark Cherpack  Finance and Administration  Suite 2100, 312 8th Ave N,  Snodgrass TN Twr  Nashville, TN 37243  (615) 253-4706</p>	March 30, 2002
11-17	Nov 16, 2001	1200 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<p>Chapter 1200-1-13  <i>Hazardous Substance Remedial Action</i>  1200-1-13-.13 List of Inactive Hazardous Substance Sites 24-508</p>	<p>Robert L. Powell  Division of Superfund  4th Fl Annex, L &amp; C Bldg  Nashville, TN 37243-1538  (615)532-0916</p>	Jan 30, 2002
11-18	Nov 16, 2001	1200 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<p>Chapter 1200-1-13  <i>Hazardous Substance Remedial Action</i>  1200-1-13-.13 List of Inactive Hazardous Substance Sites 33-542</p>	<p>Robert L. Powell  Division of Superfund  4th Fl Annex, L &amp; C Bldg  Nashville, TN 37243-1538  (615)532-0916</p>	Jan 30, 2002
11-19	Nov 16, 2001	1200 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<p>Chapter 1200-1-13  <i>Hazardous Substance Remedial Action</i>  1200-1-13-.13 List of Inactive Hazardous Substance Sites 27-516</p>	<p>Robert L. Powell  Division of Superfund  4th Fl Annex, L &amp; C Bldg  Nashville, TN 37243-1538  (615)532-0916</p>	Jan 30, 2002
11-20	Nov 16, 2001	1200 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<p>Chapter 1200-1-13  <i>Hazardous Substance Remedial Action</i>  1200-1-13-.13 List of Inactive Hazardous Substance Sites 33-617</p>	<p>Robert L. Powell  Division of Superfund  4th Fl Annex, L &amp; C Bldg  Nashville, TN 37243-1538  (615)532-0916</p>	Jan 30, 2002

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-21	Nov 16, 2001	<b>1200 Environment and Conservation</b> Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 33-660	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville, TN 37243-1538 (615)532-0916	Jan 30, 2002
11-22	Nov 16, 2001	<b>1240 Human Services</b> Child Support Division	Public Necessity Rules	New Rule	<i>Chapter 1240-2-3</i> <i>Miscellaneous IV-D</i> 1240-2-3-.03 Child Support Processing Fee	Barbara Broersma, Citizens Plaza Bldg, 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	Nov 16, 2001 through April 15, 2002
11-24	Nov 16, 2001	<b>1395 Tennessee Bureau of Investigation</b>	Proposed Rules	Repeal and new rules	<i>Chapter 1395-1-1</i> <i>Tennessee Crime Information Center</i> 1395-1-1-.01 Short Title 1395-1-1-.02 Statement of Intent and Application 1395-1-1-.03 Definitions 1395-1-1-.04 Applicability of Federal and State Law, Rules, Regulations and Guidelines 1395-1-1-.05 Scope of Rules 1395-1-1-.06 Tennessee Crime Information Enforcement System (TIES) 1395-1-1-.07 Automated Fingerprint Identification System (AFIS) 1395-1-1-.08 Certification of Records	David Jennings Professional Standards Unit TN Bureau of Investigation 901 R. S. Gass Blvd Nashville, TN 37216-2639 (615) 744-4204	March 30, 2002
11-26	Nov 21, 2001	<b>0400 Environment and Conservation</b> Division of Water Supply	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-5-1</i> <i>Public Water Systems</i> 1200-5-1-.06 Maximum Contaminant Levels 1200-5-1-.10 Organic Chemical Sampling and Analytical Requirements 1200-5-1-.11 Radionuclide Sampling and Analytical Requirements 1200-5-1-.14 Laboratory Certification 1200-5-1-.17 Operations and Maintenance 1200-5-1-.18 Reporting Requirements 1200-5-1-.19 Notification of Customers 1200-5-1-.20 Record Maintenance 1200-5-1-.26 Volatile Organic Chemical Sampling, Analytical and Other Requirements 1200-5-1-.31 Filtration and Disinfection 1200-5-1-.35 Consumer Confidence Reports 1200-5-1-.36 Disinfectant Residuals, Disinfection Byproduct and Precursors	Robert L. Foster, Jr. Division of Water Supply 6th Fl L&C Twr Nashville, TN 37243-1549 615 532-0155	Feb 4, 2002

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SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-28	Nov 21, 2001	<b>0450 Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists</b>	Rulemaking Hearing Rules	Amendments	Chapter 0450-1 <i>General Rules Governing Professional Counselors</i> 0450-1-.01 Definitions Chapter 0450-2 <i>General Rules Governing Marital and Family Therapists</i> 0450-2-.04 Qualifications for Licensure 0450-2-.10 Supervision	Tracey Boyers-Heathman, OGC 26th Fl Snodgrass TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Feb 4, 2002
11-29	Nov 21, 2001	<b>0940 Mental Health and Developmental Disabilities Office of Licensure</b>	Emergency Rules	New Rule	Chapter 0940-5-4 <i>Life Safety Licensure Rules</i> 0940-5-4-.11: Residential Occupancies	Cynthia C. Tyler OGC Mental Health and Developmental Disabilities 2600 Snodgrass Twr Nashville TN 37243 (615) 532-6518	Nov 21, 2001 through May 5, 2002
11-32	Nov 29, 2001	<b>0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control</b>	Rulemaking Hearing Rules	Amendment	Chapter 1200-3-5 <i>Visible Emission Regulations</i> 1200-3-5-.04 Exemption	Mr. Jeryl W. Stewart Division of Air Pollution Control 9th FL & C Annex 401 Church Street Nashville, TN 37243-1531 (615)532-0605	Feb 12, 2002
11-33	Nov 29, 2001	<b>0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control</b>	Rulemaking Hearing Rules	Amendment	Chapter 1200-3-9 <i>Construction and Operating Permits</i> 1200-3-9-.04 Exemptions	Mr. John D. Patton Division of Air Pollution Control 9th FL & C Annex 401 Church Street Nashville, TN 37243-1531 (615) 532-0604	Feb 12, 2002
11-43	Nov 30, 2001	<b>0180 Financial Institutions Bank Division</b>	Proposed Rules	Amendments	Chapter 0180-5 <i>Public Notice of Application for a New Bank Charter or a Branch Bank</i> 0180-5-.01. Public Notice of Application/Notification for a New Bank Charter or a Branch Bank 0180-5-.02 Required Statement 0180-5-.03 Notice Required by the Federal Deposit Insurance Corporation 0180-5-.04 Proof of Notice	Tina G. Miller, Staff Attorney 27th Fl, Snodgrass Bldg 615/532/1030	Mar 30, 2002

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-44	Nov 30, 2001	0180 Financial Institutions Bank Division	Proposed Rules	Amendments	Chapter 0180-7 Rules of Practice: Applications, Instructions, Forms, Reports of State Banks and Schedule of Application Fees for State Banks, BDCOs, Savings Banks and Trust Companies 0180-7-03. Application/Notification Procedure for Branches of Banks Chartered by the Department. 0180-7-04 Application/Notification Procedure for a Tennessee-Chartered Bank to Change the Location of its Main Office or a Branch. 0180-7-05 Application Procedure For Amendment of Charter 0180-7-06 Formation of Interim Banks 0180-7-08 Fees 0180-7-09 Branch Name Usage	Tina G. Miller, Staff Attorney 27th Fl, Snodgrass Bldg 615/532/1030	Mar 30, 2002
11-45	Nov 30, 2001	0180 Financial Institutions Bank Division	Proposed Rules	Amendments	Chapter 0180-20 Recovery of the Costs of Examination and Supervision of Certain Financial Institutions 0180-20-02 Definitions 0180-20-03 Special Assessments	Tina G. Miller, Staff Attorney 27th Fl, Snodgrass Bldg 615/532/1030	Mar 30, 2002
11-46	Nov 30, 2001	0180 Financial Institutions Bank Division	Proposed Rules	New Rule	Chapter 0180-30 Rules Pertaining to the Assessment of the Annual Fee for Non-depository Trust Companies 0180-30-01 Annual Fee for Non-depository Trust Companies	Tina G. Miller, Staff Attorney 27th Fl, Snodgrass Bldg 615/532/1030	Mar 30, 2002

**DEPARTMENT OF HEALTH - 1200****BEFORE THE BOARD FOR LICENSING HEALTH CARE FACILITIES****PETITION FOR DECLARATORY ORDER  
NOTICE OF HEARING  
AND  
NOTICE TO POTENTIALLY INTERESTED PERSONS**

McKinney Care Homes for the Aged, Numbers One (1), Two (2), and Three (3) have filed a Petition for Declaratory Order pursuant to T.C.A. §4-5-224 and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Rule 1360-4-1-.07.

1. Petitioner's Name:

McKinney Care Homes for the Aged, Numbers One (1), Two (2), and Three (3)

2. Petitioner's Attorney: Felicia Corbin, Attorney at Law

Address: 3001 Whitney Avenue  
Memphis, Tennessee 38128  
Phone Number: (901)219-6373

Docket Number: 17.17-021046A

3. Organization, if any, that the Petitioner represents:

None

4. Summary of Relief Requested:

In the Petition for Declaratory Order, the Petitioner has sought the following relief:

- a. That the Board for Licensing Health Care Facilities, hereinafter "Board," issue a Declaratory Order finding that, according to the Petition filed, "[w]hen the Commissioner issues a Notice of Suspension of Admissions pursuant to T.C.A. § 68-11-207(b)(4) and the Respondent files a contest pursuant to T.C.A. § 68-11-2816, the Board may only continue, revoke or modify the suspension of admissions pursuant to T.C.A. § 68-11-207(b)(6)(A). In order for the Board to revoke, suspend, or condition Respondent's license under its authority pursuant to T.C.A. § 68-11-207(b)(6)(B), proper proceedings must be initiated by the division to specifically revoke or suspend Respondent's licenses. In the alternative, if the Board finds that it has authority pursuant to T.C.A. § 68-11-207(b)(6) to revoke, suspend or condition Respondent's licenses during a contested case hearing challenging the suspension of admissions imposed by the Commissioner, Respondent respectfully requests that the Board issue a declaratory order that T.C.A. § 68-11-207 violates Respondent's constitutional right to due process of law and a fair hearing. T.C.A. § 68-11-207(b)(4) and (5) are clearly intended to allow the Respondent an opportunity to correct any conditions or deficiencies in order that the suspension of admissions can be lifted. In order to have the suspension lifted, submission of a corrective action plan by Respondent is mandatory. Once the plan is submitted, it is then reviewed by Division officials and accepted or rejected with instructions to resubmit. When the process requires that Respondent acknowledge that certain conditions or deficiencies may exist in the corrective action plan, it is a violation of the Respondent's right to a fair hearing if the Division can use the facts and evidence gathered during that process against Respondent in the contested case hearing and the Board can consider and use that evidence to find

that certain violations existed, thus justifying the suspension or revocation of the Respondent's licenses requested by the Division. Such a process is fundamentally unfair and prejudicial to Respondent and certainly not intended by the legislature when enacting T.C.A. §§ 68-11-207(b)(4) and 68-11-207(b)(5) and 68-11-207(b)(6)."

5. Summary of the regulations that the agency is called on to interpret or upon which it is to rule.

The Petition for Declaratory Order requests a ruling on the power of the Board to revoke or suspend a license, pursuant to T.C.A. § 68-11-207 (b)(6), in a proceeding contesting a suspension of admissions issued by the commissioner pursuant to T.C.A. § 68-11-207(b)(1). T.C.A. § 68-11-207 provides as follows:

T.C.A. § 68-11-207 Suspension or revocation of license – Grounds – Procedure.

(a) The board may suspend or revoke the license issued hereunder on any of the following grounds:

(1) A violation of the provisions of this part or of the rules and regulations or minimum standards issued pursuant hereto, or, in the event of a nursing home which has entered into an agreement with the department to furnish services under Title XVIII (42 U.S.C. § 1395 et seq.) or XIX (42 U.S.C. § 1396 et seq.) of the Social Security Act, any of the requirements for participation in the medical assistance program set out in part 405, subpart K or part 442 subparts D, E, F, & G of title 42 of the Code of Federal Regulations, to such an extent that the board considers the licensee a chronic violator;

(2) Permitting, aiding or abetting the commission of any illegal act in such institutions; or

(3) Conduct or practice found by the board to be detrimental to the welfare of the patients in such institutions.

(b)(1) In those cases where the conditions of any nursing home or home for the aged are, or are likely to be, detrimental to the health, safety or welfare of the patient or resident, the commissioner has the authority to suspend the admission of any new patients or residents to the facility pending a prompt hearing before the board, or an administrative judge if the board cannot be convened promptly.

(2) The commissioner is authorized at any time prior to a hearing, based upon information presented to the commissioner showing that such conditions have been and will continue to remain corrected, to revoke the suspension of admissions.

(3) Whenever the commissioner suspends the admission of any new patients, the commissioner shall detail, in a notice to the facility, the specific violations causing the suspension.

(4) This notice shall detail what conditions are considered detrimental to the health, safety or welfare of the patients and an explanation of the specific time frame when and conditions under which the facility can reasonable expect the suspension to be lifted.

(5) If the facility complies with these conditions, the commissioner shall lift the suspension within the time frame unless other conditions exist that warrant an additional suspension or continuation of the suspension.

(6) The board has the authority to:

- (A) Continue, revoke or modify the suspension of admissions;
- (B) Revoke, suspend or condition the license of the facility; and
- (C) Enter such other orders as it deems necessary.

(c) Imposing the sanctions authorized in this section, the board may consider all factors which it deems relevant, including, but not limited to, the following:



- (1) The degree of sanctions necessary to ensure immediate and continued compliance.
  - (2) The character and degree of impact of the violation on the health, safety and welfare of the patient in the facility;
  - (3) The conduct of the facility against whom the notice of violation is issued in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
  - (4) Any prior violations by the facility of statutes, regulations or orders of the board.
- (d) The board may, in its discretion, after the hearing, hold the case under advisement and make a recommendation as to requirements to be met by the facility in order to avoid either suspension or revocation of license or suspension of admissions.

A contested case hearing has been scheduled for January 9, 2002 at 9:00 a.m. before a designee from the Board for Licensing Health Care Facilities in the Big Tennessee Room of the Cordell Hull Building, Ground Floor, 425 5th Avenue North, Nashville, Tennessee 37247.

If you have questions, you may contact the Petitioner's attorney, Felicia Corbin, at the address and phone number listed at the beginning of this notice.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 27th day of November, 2001.

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

*Applications will be heard at the January 23, 2002*

*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 November 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

Parkway Health & Rehab Center  
200 South Parkway West  
Memphis (Shelby Co.), TN 38108  
Natalie Berkley – (901)—942-7456  
CN0109-066

The addition of twenty (20) nursing home beds dually certified for Medicare/Medicaid" at Parkway Health and Rehab, 200 South Parkway West, Memphis, Tennessee. If approved, the licensed bed capacity of Parkway Health & Rehab will increase from one hundred (100) to one hundred twenty (120) nursing home beds.

\$ 28,000.00

Livingston Regional Hospital  
315 Oak Street  
Livingston (Overton Co.), TN 38570  
John Wellborn – (615)—665-2022  
CN0110-077

The initiation of mobile lithotripsy services one day per week on the hospital campus at 315 Oak Street in Livingston, Tennessee.

\$ 231,478.00

## NAME AND ADDRESS

Skyline Medical Center  
3441 Dickerson Pike  
Nashville (Davidson Co.), TN 37207  
John Wellborn – (615)–665-2022  
CN0110-079

## DESCRIPTION

The initiation of rehabilitation services. Twenty-two (22) skilled nursing beds will be delicensed and converted to a twenty-two (22) bed rehabilitation unit. If this application is approved, the total hospital bed complement will increase by twenty-two (22) beds from one hundred seventy-two (172) to one hundred ninety-four (194) beds, while the skilled nursing beds will decrease by twenty-two (22) beds from thirty-one (31) to nine (9) beds.

\$ 263,000.00

Tri-Cities Endoscopy Center  
10461 Wallace Alley Street  
Kingsport (Sullivan Co.), TN 37663  
John Wellborn – (615)–665-2022  
CN0110-081

The establishment of a single specialty ambulatory surgical treatment center and the initiation of outpatient endoscopy surgery at 10461 Wallace Alley Street in Kingsport, Tennessee. The preliminary project design calls for a 3,600 square foot endoscopy center with two procedure rooms initially, and space for adding a third room in the future. The facility will also have three pre-op stations and ten recovery stations, a nursing station and equipment, storage, dressing, and bathroom areas.

\$ 1,879,893.00

The Health Center at AdamsPlace  
1927 Memorial Boulevard  
Murfreesboro (Rutherford Co.), TN 37130  
Bruce Duncan – (615)–890-2020  
CN0110-082

The addition of thirty (30) Medicare skilled nursing home beds to an existing sixty (60) bed nursing home at 1927 Memorial Boulevard in Murfreesboro, Tennessee.

\$ 3,525,000.00

+The Sports Medicine Institute, PLLC  
854 Lone Oak Drive  
Gallatin (Sumner Co.), TN 37066  
Byron R. Trauger – (615)–256-8585  
CN0110-083

The establishment of an ambulatory surgical treatment center (ASTC) and the initiation of multi-specialty outpatient surgery at 854 Lone Oak Drive in Gallatin, Tennessee. The applicant proposes to utilize an existing ASTC (Green Surgery Center, LLC), that is currently operating one day a week as a single specialty surgery center limited to ophthalmology. The applicant will operate the facility the remaining four days of the week. The facility has one operating suite.

\$ 1,166,500.00

+Sumner Diagnostic Center  
U.S. 31E at Greensboro Village  
Gallatin (Sumner Co.), TN 38570  
John Wellborn – (615)–665-2022  
CN0110-084

The establishment of an outpatient diagnostic center (ODC), the initiation of magnetic resonance imaging (MRI) services, and the acquisition of an MRI scanner as well as computed tomography, ultrasound, and mammography imaging equipment. The ODC will be located at the intersection of U.S. 31E and Greensboro Village in Gallatin, Tennessee.

\$ 8,370,177.00

NAME AND ADDRESS	DESCRIPTION
Saint Thomas Campus Surgicare, L.P. Medical Plaza East Office Building, 3 <sup>rd</sup> Floor 4230 Harding Road Nashville (Davidson Co.), TN 37205 E. Graham Baker – (615)—383-3332 CN0110-085	The establishment of a six (6) operating room multi-specialty ambulatory surgical treatment center located in the Saint Thomas Medical Plaza East Office Building, 3 <sup>rd</sup> Floor, 4230 Harding Road, Nashville, Tennessee. The six (6) operating rooms are currently owned and operated by Saint Thomas Hospital. If this application is approved, Saint Thomas Hospital will discontinue utilizing the existing six (6) operating suites. \$ 5,054,199.00
+Saint Thomas Hendersonville Surgicare, L.P. 101 Maple Drive, North Hendersonville (Sumner Co.), TN 37075 E. Graham Baker – (615)—383-3332 CN0110-086	The establishment of a three (3) operating room plus one (1) non-sterile procedure room multi-specialty ambulatory surgical treatment center located at 101 Maple Drive in Hendersonville, Tennessee. \$ 4,316,900.00
Cheyenne Trace 420 Cheyenne Drive Jackson (Madison Co.), TN 38305 William West – (615)—259-1450 CN0110-087	The establishment of a nursing home with thirty (30) “Medicare Only” skilled nursing facility (SNF) beds to be located at 420 Cheyenne Drive, Jackson, Tennessee. \$ 1,515,000.00
+Thomas L. Gautsch, M.D., P.C. 608 Commons Drive Gallatin (Sumner Co.), TN 37066 Byron Trauger – (615)—256-8585 CN0110-088	The initiation of in-office magnetic resonance imaging (MRI) services at 608 Commons Drive in Gallatin, Tennessee. \$ 693,000.00

## **EMERGENCY RULES**

### **EMERGENCY RULES NOW IN EFFECT**

- 1340 - Department of Safety - Division of Driver License Issuance - Emergency rules regarding verification of residence and identification for those seeking driver licenses upon initial issuance, chapter 1340-1-13 Classified and Commercial Driver Licenses, 11 T.A.R. (November 15, 2001) - Effective October 31, 2001 through April 14, 2002. (10-22)

## **EMERGENCY RULES OF THE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES OFFICE OF LICENSURE**

### **CHAPTER 0940-5-4 LIFE SAFETY LICENSURE RULES**

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

Pursuant to Tenn. Code Ann. §§ 4-5-208 I am promulgating emergency licensure rules covering mental health and developmental disability two- and three-bed residential facilities accommodating individuals who cannot evacuate the residence without physical assistance. The emergency rules are necessary because the existing licensure rules in chapter 0940-5-4, section .07, were written for two and three bed residential facilities accommodating persons who can evacuate without physical assistance.

I have made the finding that there is an emergency creating a danger to the public welfare in that, without emergency rules, there will not be state regulations requiring trained staff to be on site to physically assist persons in evacuating the residence in case of a fire, until permanent rules are promulgated by the Department of Mental Health and Developmental Disabilities.

Therefore, unless emergency licensure life safety rules for two- and three-bed residential facilities are adopted, there would be no state regulations requiring training and staff coverage for persons who need physical assistance in evacuating the residence. The lack of such rules could be injurious to the safety of individuals with mental illness and developmental disabilities who need physical assistance in evacuating a residence in case of fire.

Elisabeth Rukeyser, Commissioner  
Department of Mental Health and Developmental Disabilities

**CHAPTER 0940-5-4**  
**LIFE SAFETY LICENSURE RULES**

Chapter 0940-5-4 is amended by adding section 0940-5-4-.11. The section shall read:

**0940-5-4-.11: RESIDENTIAL OCCUPANCIES** - one- and two-family dwellings (two or three residents who are unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility without physical assistance, in three (3) minutes or less).

- (1) Definition: One-and two-family dwellings include buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders who are unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility without physical assistance, in three (3) minutes or less. Examples of facilities required to meet one-and two-family dwelling occupancy with residents unable to evacuate without physical assistance, in three (3) minutes or less are the following:
  - (a) Mental Retardation Residential Habilitation Facility
  - (b) Mental Health Supportive Living Facility
  - (c) Mental Health Residential Treatment Facility
- (2) Criteria: For the purpose of Life Safety, facilities accommodating residents unable to evacuate without physical assistance, in three (3) minutes or less and are required to meet one-and two-family dwelling occupancies must comply with the following:
  - (a) Applicable standards of the Life Safety Code of the National Fire Protection Association, or equivalent standards hereafter adopted by the Office of the State Fire Marshal
  - (b) The following additional standards:
    1. A specific staff person must be assigned to each individual, prior to admission, who is unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility, without physical assistance, in three (3) minutes or less. Individuals who use a wheelchair for evacuation purposes need not be assigned a specific staff person to assist them as long as they are able to transfer from a fixed position to the wheelchair without physical assistance, and evacuate the facility in three (3) minutes or less.
    2. Evacuation procedures shall be sufficient so that it is not necessary for a staff person to re-enter the building after once leaving.
    3. A risk assessment must be completed for each individual admitted to the facility within five (5) calendar day of admission to the facility on a form prepared by the Department.
    4. If the risk assessment indicates that the individual is able to evacuate without physical assistance within three (3) minutes or less, then it is not necessary to assign a specific staff person to assist the individual in evacuating.
    5. If the risk assessment indicates that the individual is not able to evacuate without physical assistance within three (3) minutes or less, then a specific staff person must be assigned to assist the individual in evacuating. Such staff assignment is required at all times that the individual is inside the facility.

6. The risk assessment must be repeated when the individual's circumstances change.
7. Staff assigned to individuals needing assistance must be trained in evacuation procedures specific to the individual being assisted.
8. Individuals who cannot evacuate without physical assistance must receive training needed to improve his ability to evacuate the facility more independently.
9. Provide at least two hundred (200) square feet, gross, of occupiable space per resident,
10. Provide at least:
  - (i) eighty(80) square feet per resident bedroom space for single occupancy, or
  - (ii) sixty (60) square feet per resident bedroom space for multiple occupancy,
11. Maintain proper storage and safeguards for all flammable materials,
12. Not use unvented gas heaters or portable electric heaters,
13. Use extension cords only on a limited basis and under the conditions acceptable to the Office of Licensure of the Department; and
14. Provide a smoke detector in each bedroom occupied by the resident, in the living rooms, and in other such rooms or areas as the Office of Licensure may require. Smoke detectors must receive their operating power from the electrical system.
15. Provide operable, type 2A-10B, C, multipurpose fire extinguishers in a fixed location and readily accessible for use in the facility, and document that all fire extinguishers are properly maintained and serviced.
16. Identify areas where smoking is permitted; smoking in bedrooms must not be allowed.
17. Not allow persons unable to evacuate without assistance above or below the ground floor.
18. Document fire-safety drills which must be conducted:
  - (i) monthly at unexpected times and under varying conditions, and ensuring each shift holds one (1) per quarter;
  - (ii) under direct staff supervision,

**Authority:** T.C.A. §§ 4-4-103, 4-5-208, and 33-1-302 and 305

The emergency rules set out herein were properly filed in the Department of State on the 21st day of November, 2001, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 5th day of May, 2002. (11-29)

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## PROPOSED RULES

### DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620

#### CHAPTER 0620-3-3

#### PERSONAL, PROFESSIONAL AND CONSULTING SERVICE CONTRACTS

Presented herein are proposed amendments to rules and repeals of rules of the Department of Finance and Administration submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in the Department of Finance and Administration, Office of the General Counsel, Suite 2100, William R. Snodgrass Tennessee Tower located at 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243 and in the Department of State, 8<sup>th</sup> floor, William R. Snodgrass Tennessee Tower, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: April Woodruff, Office of the General Counsel, Department of Finance and Administration, Suite 2100, William R. Snodgrass Tennessee Tower, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243, (615) 741-0320.

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

#### AMENDMENTS

Rule 0620-3-3-.01 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.01 APPLICABILITY.** These rules shall apply to all procurements and resulting contracts for personal services, professional services and consultant services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the state of Tennessee (referenced herein as “agency”), with the following exceptions:

- (1) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of Tennessee Code Annotated, §§ 54-5-113, et. seq. shall be exempt from these rules.
- (2) Contracts for services which, by their nature, have sufficiently uniform and impersonal criteria so that the Department of General Services may properly let the contract by bid based upon conformance with required specifications and lowest overall price, may be procured through the Department of General Services, Purchasing Division.

Examples of such services include but are not limited to: pest control, moving and hauling, refuse collection, charter service (e.g., vehicle, plane), slaughtering services and meat processing, answering services, printing services, ambulance service, bulldozer service, maintenance (e.g., elevator, machinery, building, grounds, plumbing, electrical), window washing, laundry, and film processing.

- (3) The Commissioner of Finance and Administration may waive any part of these rules that may detrimentally impact federal funding.
- (4) Any part of these rules which may conflict with applicable law shall be null and void.
- (5) The University of Tennessee and the Tennessee Board of Regents college and university systems shall have the option of:
  - (a) following these rules, the policy and procedures specified herein; or
  - (b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.
- (6) In lieu of approvals required in accordance with Rule 0620-3-3-.06(3), the head of a procuring agency may approve the procurement methodology and associated procurement documents should the total cost of services fall below \$500.00 (or another amount up to \$15,000.00 which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury).
  - (a) Service procurements under this threshold shall be made in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines but shall require no approval beyond that of the procuring agency head; provided that:
    1. such procurements are still subject to applicable provisions of these rules;
    2. such procurements do not require expenditures from more than one fiscal year;
    3. such procurements do not involve the purchase of financial management, auditing, accounting, management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing, engineering, or architectural services;
    4. procurement requirements shall not be artificially divided so as to constitute a purchase subject to this rule, 0620-3-3-.01(6); and
    5. annual needs for the subject service could not otherwise be more advantageously met with a fee-for-service contract.
  - (b) Notwithstanding the foregoing, all procurement documents under this rule, 0620-3-3-.01(6), shall be submitted to the Department of Finance and Administration Office of Contracts Review for data collection and funding certification.
  - (c) Rule 0620-3-3-.01(6) shall not be construed to apply to an Endowment Grant, a Delegated Grant Authority, a Delegated Loan Authority, a Delegated Purchase Authority, a no cost contract, or a revenue contract as defined by Rule 0620-3-3-.08 and .09 and shall not be construed to apply to Department of Transportation construction and engineering procurements made in accordance with the provisions of Tennessee Code Annotated, §§ 54-5-113, et. seq.
- (7) Contracts to employ additional legal counsel for the state of Tennessee are subject to the provisions of Tennessee Code Annotated, § 8-6-106. Said contracts shall not be subject to these rules. Contracts for the provision of legal services, consultation, or advice to beneficiaries of programs of the state of Tennessee and not directly to the state of Tennessee shall be made in accordance with these rules.

- (8) An agreement with the federal government providing for a grant award from the federal government to the state (to finance general purposes, operations, or program activities or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these rules. Notwithstanding the foregoing, the state's contracts with subrecipients and vendors paid with federal funding shall be subject to these rules.
- (9) Gifts to the state do not require a contract subject to these rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient state agency regarding the gift.
- (a) For purposes of this rule, a gift to the state shall be defined as a voluntary transfer of service to the state made gratuitously and without consideration. Essential requisites of a gift are:
1. capacity of the donor of the gift;
  2. intention of donor to make gift;
  3. completed delivery of the gift to or for the state, and
  4. acceptance of the gift by the state.
- (b) Nothing in this rule shall be construed to mean that the state must accept any gift.
- (10) These rules shall not apply to utilities.
- (11) These rules shall not apply to contracts required to be approved by the State Building Commission.

**Authority:** *T.C.A. §§4-5-202, 12-4-109 and 12-4-110.*

Rule 0620-3-3-.02 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.02 OFFICE OF CONTRACTS REVIEW.** There shall be created within the Department of Finance and Administration an Office of Contracts Review, which shall serve as the main point of contact and authority, subject to the approval of the Commissioner of Finance and Administration, regarding all matters subject to these rules.

The Office of Contracts Review shall:

- (1) execute the rules of this chapter;
- (2) act on behalf of the Commissioner of Finance and Administration in making determinations required by these rules;
- (3) provide procedural direction governing personal, professional, or consultant service procurements and contracts in accordance with these rules;
- (4) provide guidelines for drafting service procurement and contract documents in accordance with these rules;
- (5) provide technical assistance to state agencies regarding service procurements and writing contracts governed by these rules;

- (6) provide coordination services for the review and approval of service contracts in accordance with these rules;
- (7) administer a system for registering service providers who may contract with the state pursuant to these rules; and,
- (8) provide analysis and support to the Commissioner of Finance and Administration regarding state procurement processes.

**Authority:** *T.C.A. §§4-5-202, 12-4-109.*

Rule 0620-3-3-.03 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.03 PROCUREMENT METHODS.**

- (1) A procurement method is the process by which the state selects one or more contractors with which to contract for a given service.
  - (a) Personal, professional, and consultant services shall be procured by a method that is determined in the state's discretion to be efficient and reasonable. Except as otherwise provided in these rules, contracts representing the procurement of services shall be made on a competitive basis.
  - (b) To be competitive, a procurement method must include a consideration and comparison of potential contractors, based upon both cost and quality (i.e., service provider qualifications, experience, and technical approach). The terms "proposal," "bid," "quote," and "offer" shall all denote that which a service provider provides for competitive consideration and comparison under any competitive procurement methodology.
  - (c) Accordingly, the Request for Proposal process, Competitive Negotiation, or an Alternative Competitive Procurement Method may be used as prescribed by these rules. Notwithstanding the foregoing, Non-Competitive Negotiation may also be used, as prescribed by these rules, in order for a state agency to meet procurement objectives efficiently and effectively and in the best interests of the state.
  - (d) Regardless of the procurement methodology used, the procuring agency shall retain a record of the procurement process and negotiations upon which each contract is based and documentation that each contract is awarded to a responsible and responsive proposer.
- (2) Request For Proposals (RFPs) - the formal solicitation of written proposals shall comply with the following requirements.
  - (a) The procuring agency shall prepare and issue an RFP and evaluate proposals in accordance with this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines. Failure by the state to comply with said rule and policy alone shall not be deemed a defect requiring rejection of all bids, said decision remaining in the discretion of the state.
  - (b) An RFP shall set forth specific provisions in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines including:

1. a clear and accurate description of the technical requirements for the service to be procured - the service technical requirements and scope shall not contain features which unduly restrict competition and shall be in sufficient detail to minimize the likelihood of requests by potential proposers for clarification;
  2. directions regarding the submittal of proposals;
  3. a timeline of the RFP process that specifies deadlines - service providers shall be given a reasonable time, as determined by the state, to consider the required scope of services and the proposal evaluation factors before proposals must be submitted;
  4. state requirements and restrictions regarding the RFP;
  5. a description of the factors to be considered in evaluating the proposals - factors may include but are not limited to service provider qualifications, experience, technical approach, and cost; and
  6. a declaration of the contract terms and conditions which shall be required by the state.
- (c) The procuring agency head shall carefully consider all individuals involved with the development, formulation, drafting, or review of an RFP or its scope of services and safeguard against a conflict of interest.
- (d) The Department of Finance and Administration shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. All RFPs that would result in contracts requiring the Comptroller's approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller's approval shall be filed by the procuring agency with the Comptroller of the Treasury contemporaneously with their public release. An RFP or its revisions shall be approved based on the following:
1. application of the requirements of this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines;
  2. adequacy of the scope of service description; and
  3. adequacy of the RFP's assurance of:
    - (i) fairness to potential service providers;
    - (ii) clear and open competition;
    - (iii) achievement of procurement objectives; and
    - (iv) protection of the state's interests.
- (e) Upon approval, the procuring agency shall send an actual RFP document or a formal notice that the specific RFP has been released to a documented list of potential service providers. The procuring agency shall compile the list of potential service providers from those known to the agency staff. The procuring agency shall determine the number of service providers to include on the list by considering

the nature of the service sought, the anticipated amount of the resulting contract, and the number of known service providers.

- (f) A procuring agency is not required to send an RFP or RFP Notice to more than a total of fifteen (15) service providers provided, however, that the procuring agency shall disseminate the RFP or RFP Notice as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines and to all that request the specific RFP. A general or standing request for notice of all RFPs or all RFPs of a given type of service shall not suffice as a request for a specific RFP and shall create no obligation on the state.
- (g) To foster the integrity of the RFP evaluation process, each proposer shall be required to submit the Cost Proposal component of the proposal in a sealed and labeled envelope separate from the Technical Proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.
  - 1. The cost proposals shall not be opened until after the evaluation of the technical component is completed. After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the scores of both components shall be combined to arrive at a total evaluation score provided, however, that the cost proposal shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the state.
  - 2. Any proposal which fails to adequately separate the cost proposal components from the technical proposal shall be considered non-responsive and rejected by the state.
- (h) Proposal evaluations shall be conducted by state employees in such a manner as to reasonably ensure that all proposals are impartially considered and state requirements are adequately met.
  - 1. Proposals shall be evaluated by a team of at least three (3) state employees. For purposes of this rule, a state employee shall be defined as set forth by Tennessee Code Annotated, § 8-42-101(3).
  - 2. Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of service providers making proposals, determine if a conflict of interest exists with a potential contractor, and sign a conflict of interest statement as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines. Said statement shall be retained as procurement file documentation.
  - 3. Proposals shall be evaluated on the basis of factors pertinent to the service sought and detailed in the RFP document.
  - 4. Neither the technical proposal nor the cost shall be the only criterion for a contract award recommendation. However, specific factors may be set forth as a criterion for determining which proposals shall be considered responsive to the RFP.
  - 5. In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the State shall request best and final cost proposals from only those proposers with scores that tie for the rank of highest score. The State shall calculate new evaluation scores for the tying proposals by adding the original technical proposal scores to the recalculated cost proposal scores based on the best and final cost proposals. Should another tie result, the contract award shall be decided by coin toss.

6. To effect a contract award to a service provider other than the proposer receiving the highest evaluation score, the head of the procuring agency shall provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.
- (e) The procuring agency shall communicate, clarify, and negotiate in the best interests of the state, provided that all communication is in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal.
  - (f) The state shall have the right, at its sole discretion, to amend an RFP in writing at any time.
  - (g) The state shall have the right, at its sole discretion, to reject any and all proposals.
    1. Any proposal that does not meet the requirements of an RFP may be considered to be nonresponsive, and the proposal may be rejected.
    2. Any proposal that restricts the rights of the state or otherwise qualifies the proposal may be considered to be nonresponsive, and the proposal may be rejected.
    3. Whenever the state proposes to reject all proposals for a certain purchase, such action shall be taken only for the following reasons:
      - (i) unreasonably high prices or failure of all proposals to meet technical specifications;
      - (ii) error in the request for proposals;
      - (iii) cessation of need;
      - (iv) unavailability of funds;
      - (v) a determination by the affected agency that proceeding with the procurement would be detrimental to the best interests of the State, the reason for which must be documented and approved by the Commissioner of Finance and Administration and filed with the Comptroller of the Treasury.
- (e) The state shall have the right, at its sole discretion, to cancel an RFP in its entirety and, at its sole discretion, to reissue or not reissue an RFP. The approval of the Commissioner of Finance and Administration shall be required prior to the cancellation of an RFP, and the Department of Finance and Administration shall file any such approved request with the Comptroller of the Treasury.
  - (f) All proposals and other material submitted in response to an RFP become subject to public record requirements of the state of Tennessee. Selection or rejection of a proposal does not affect its public records status. Upon the completion of the review and evaluation of proposals submitted in response to an RFP, evaluated proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, § 10-7-504(a)(7).
- (2) Competitive Negotiation - the informal process of verbal or written solicitation of proposals shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
    - (a) The Competitive Negotiation process may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:

1. public need will not permit the delay incident to the RFP process;
  2. no acceptable proposals have been received after an RFP process;
  3. rates payable for the services are regulated by law;
  4. the services to be procured are legal or expert witness services; or
  5. the total cost of the services does not exceed \$10,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.
- (b) Prior to proceeding with a Competitive Negotiation process, the head of the procuring agency shall justify such a procurement method in writing, based on the criteria set forth in Rule 0620-3-3-.03(2)(a), and request and obtain the written approval of the Commissioner of Finance and Administration. Said request shall document the criteria and methodology to be used in evaluating offers in response to the solicitation.
- (c) Upon approval to proceed with the Competitive Negotiation process, the procuring agency shall:
1. identify and contact at least three (3) potential service providers for Competitive Negotiation, provided, however, that the procuring agency shall contact minority, disadvantaged, and small business service providers as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines;
  2. communicate the requirements of the state, solicit proposals, and clarify and negotiate as necessary in the best interests of the state, ensuring that all communication is conducted in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal;
  3. document all proposals in response to the solicitation; and
  4. select for contract award, in accordance with the approved evaluation criteria and methodology, the service provider meeting required qualifications, terms, and conditions and offering the best proposal in terms of qualifications, delivery, and cost.
- (c) The procuring agency shall document the Competitive Negotiation process. The state agency shall provide a summary of said documentation upon submitting the contract for Department of Finance and Administration approval.
- (d) Subsequent to selection and negotiation the agency shall write a contract and initiate contract approval in accordance with these rules.
- (3) Alternative Competitive Procurement Method - an alternative process of procuring service shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (a) A procuring agency may devise and document procedures for an Alternative Competitive Procurement Method and use the methodology in a specific contractor selection process provided that:



1. prior, written approval of the Commissioner of Finance and Administration is obtained, and
  2. prior, written approval of the Comptroller of the Treasury is obtained for procurement processes that will result in a contract requiring the approval of the Comptroller.
- (a) The Department of Finance and Administration shall file approved requests to use an Alternative Competitive Procurement Method, and the reasons therefore with the Comptroller of the Treasury.
- (4) Non-Competitive Negotiation - the negotiation of the terms of a service contract with only one service provider shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (a) Non-Competitive Negotiation may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:
1. there is only one uniquely qualified service provider capable of performing the needed service;
  2. the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly;
  3. the selected service provider is an entity of the federal government;
  4. the use of Non-Competitive Negotiation is in the best interests of the state; or
  5. the total cost of the services for which the contract shall be written does not exceed \$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.
- (b) Before beginning Non-Competitive Negotiation, the head of the procuring agency shall justify such a procurement in writing and request and obtain the approval of the Commissioner of Finance and Administration.
1. A Non-Competitive Negotiation request shall specify:
    - (i) the petition to procure the subject service by means of negotiation with only the one, identified service provider;
    - (ii) the service provider with whom the state would negotiate for the service;
    - (iii) the service to be procured;
    - (iv) the specific Rule 0620-3-3-.03(5)(a) requirement(s) for Non-Competitive Negotiation believed to be satisfied by the subject procurement;
    - (v) the justification for Non-Competitive Negotiation detailing sound, business reasoning why a competitive procurement of the given services is not appropriate and why Non-Competitive Negotiation is in the best interests of the state;

- (vi) the maximum cost of the non-competitive procurement; and
  - (vii) the contract duration.
2. The request and approval for Non-Competitive Negotiation required by Rule 0620-3-3-.03(5)(b) shall not be required when:
- (i) the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly except, (said request, justification, and approval of Non-competitive negotiation shall be required) when the selected service provider is a state institution of higher education (e.g., a component of the University of Tennessee or the Tennessee Board of regents college and university systems);
  - (ii) the selected service provider is an entity of the federal government; or
  - (iii) the total cost of the services for which the contract shall be written does not exceed \$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.
- (c) Upon approval to proceed with Non-Competitive Negotiation, the procuring agency shall negotiate the best possible terms and price with the service provider, write a contract, and initiate contract approval in accordance with rules of this chapter.
  - (d) By signing the contract, the procuring agency head indicates and confirms his or her determination that the contract price resulting from non-competitive negotiations is fair, reasonable, and, in the case of contracts with governmental entities, competitive.
  - (e) The procuring agency shall document the Non-Competitive Negotiation process.
  - (f) The Department of Finance and Administration shall file approved requests to use Non-Competitive Negotiation to procure services and the reasons therefore with the Comptroller of the Treasury
- (2) Grant Award - A grant in accordance with Rule 0620-3-3-.08(a) of this chapter shall not require justification or approval for any Competitive or Non-Competitive Negotiation but shall require a summary of the grantee selection process specifying whether it was a competitive or non-competitive process.

**Authority:** T.C.A.. §§ 4-5-202, 12-4-109.

Rule 0620-3-3-.04 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

0620-3-3-.04 Protest Procedures. Tennessee Code Annotated, § 12-4-109(a)(1)(E) sets forth protest procedures regarding Requests for Proposals (RFPs) issued by the state.

- (1) Any service provider who has submitted a proposal in response to a specific RFP subject to these rules and who claims to be aggrieved in connection with that specific RFP process may protest to the procuring agency head.

- (a) A protest shall be submitted within seven (7) calendar days after such claimant knows or should have known of the facts giving rise to the protest.
    - 1. All proposers to an RFP should know and shall be deemed responsible for knowing the facts documented in the state's procurement files on the day the procuring agency opens the RFP files for public inspection pursuant to Tennessee Code Annotated, § 10-7-504 (a)(7).
    - 2. All protests shall be submitted in writing to the head of the procuring agency within the required seven (7) calendar day period. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.
    - 3. At the time of filing a notice of protest, the protesting party shall submit, to the procuring agency head, a bond payable to the State of Tennessee in the amount of five percent (5%) of the lowest cost proposal evaluated. Any protest submitted without the protest bond as required shall not proceed. A party may request an exemption from the protest bond requirement if it meets the qualifications of Tennessee Code Annotated Section 12-4-109(a)(1)(E)(v).
  - (b) The protest bond shall be in form and substance acceptable to the State (see Rule 0620-3-3-.13 for protest bond sample form) and shall be immediately payable to the State of Tennessee conditioned upon a decision by the review committee that:
    - 1. a request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the review committee, in violation of Tennessee Code Annotated, § 12-4-109 (a)(1)(E)(ii);
    - 2. the protest has been brought or pursued in bad faith; or
    - 3. the protest does not state on its face a valid basis for protest.
  - (c) The State shall hold a protest bond for at least eleven (11) calendar days after the date of the final determination by the procuring agency head. If the protesting party appeals the procuring agency determination to the Review Committee, the head of the procuring agency shall hold said protest bond until instructed by the review committee to either keep the bond or return it to the protesting party.
  - (d) A written protest to the procuring agency head shall enumerate and detail all issues and associated reasoning that the protestor wishes to be considered and requests judgments to be rendered upon by the state.
  - (c) Upon knowledge of any protest subject to these rules, the procuring agency shall notify and provide a copy of the written protest to the Department of Finance and Administration Office of Contracts Review.
  - (d) The procuring agency shall have no more than sixty (60) calendar days from receipt of a protest to resolve the protest unless the protestor and the procuring agency agree upon an extension of this time. The final determination of the procuring agency shall be given in writing. Said determination shall be submitted to the protestor and the Department of Finance and Administration Office of Contracts Review.
- (2) The protestor may appeal the procuring agency head's decision to the Review Committee within seven (7) calendar days from the date of the decision. The protestor's written request for consideration of the protest by the Review Committee
- (a) meet the requirements of Tennessee Code Annotated, § 12-4-109(a)(1)(E), et seq.;

- (b) be delivered to both the procuring agency head and the Commissioner of Finance and Administration; and,
  - (c) enumerate and detail all issues raised in the initial protest that the protestor wishes to be considered and requests judgments to be rendered upon by the Review Committee.
- (3) The protestor shall provide no less than fifteen (15) copies of each exhibit or document upon introduction of such at the meeting of the Review Committee.

*Authority: T.C. A. §§4-5-202, 12-4-109.*

Rule 0620-3-3-.05 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.05 CONTRACT FORM.** The purpose of a written contract is to embody, in writing, the complete agreement between parties. No terms shall be left to an unwritten understanding. A contract shall be explicit and clearly state the rights and duties of each party. The terms and conditions for a contract subject to these rules shall be written, in form and content, in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines. Except as otherwise provided by the rules of this chapter, a contract subject to these rules shall meet the following requirements:

- (1) The contractor's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The contractor's duties may include, but are not limited to, the type, scope, duration, form, quality, quantity, place, time, and purpose of services.
- (2) The state's duties shall be clearly defined and detailed in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines. Contract terms shall clearly indicate the maximum liability of the state under the contract. The state's duties also include, but are not limited to, the method, timing and conditions of payment and the period of the contract.
- (3) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the state, shall be written as special terms and conditions, in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (4) A Contract Summary Sheet, as required by Department of Finance and Administration Office of Contracts Review, shall be attached to the face of each original copy of a contract. Said Contract Summary Sheet shall remain attached to each copy of the contract whether held by the Division of Accounts, the procuring agency, or the contractor.
- (5) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract [Grant] or in the employment practices of the Contractor [Grantee] on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor [Grantee] shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination."
- (6) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] shall maintain documentation for all charges against the State under this Contract [Grant]. The books, records, and documents of the Contractor [Grantee], insofar as they relate to work performed or money received under this Contract [Grant], shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any

reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.”

*Authority:* T.C. A. §§ 4-5-202, 12-4-109.

Rule 0620-3-3-.06 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.06 CONTRACT APPROVAL.** A contract subject to these rules shall be written and approved in accordance with this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines.

- (1) The procuring agency shall initiate approval of a contract or a contract amendment by delivering the contract or amendment, signed by the contract parties, to the Department of Finance and Administration Office of Contracts Review.
  - (a) A base contract (the original contract prior to any amendments) shall be submitted with:
    1. documentation of the procurement method and other procurement documentation which may be required by these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines; and
    2. an approved copy of any request which may have been made for an exception to these rules or a deviation from Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (b) A contract amendment shall be submitted with:
    1. a copy of the base contract and all previous amendments to the base contract; and,
    2. if applicable, a new, written request to the Commissioner of Finance and Administration justifying the change in terms by means of Non-Competitive Negotiation (in accordance with Rule 0620-3-3-.07(1)); the Department of Finance and Administration shall file approved requests for non-competitive negotiation with the Comptroller of the Treasury.
- (2) A contract or contract amendment subject to these rules shall be subject to the final approval of the Commissioner of Finance and Administration. Accordingly, the Department of Finance and Administration Office of Contracts Review shall:
  - (a) provide technical assistance toward the achievement of procurement goals and protection of the state’s interests;
  - (b) assign a unique contract number to each contract;
  - (c) coordinate a process whereby funding availability is certified for each contract;
  - (d) review contract documents for Commissioner of Finance and Administration approval; and
  - (e) coordinate the review for approval by other officials required by these rules.

- (3) Upon approval by the Commissioner of Finance and Administration, a contract shall be fully approved, with the following exceptions:
- (a) The Governor shall approve a contract between state agencies that includes provisions for cooperative programs.
  - (b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.
  - (c) The Comptroller of the Treasury shall approve a contract that includes:
    - 1. term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;
    - 2. provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;
    - 3. provisions concerning management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing; or
    - 4. provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.
  - (d) The Commissioner of Personnel shall approve a contract that includes:
    - 1. provisions for training state employees (except as provided by Rule 0620-3-3-.07(21)); or
    - 2. provisions permitting the procurement of services from an individual.
- (4) Upon final approval of a contract document requiring expenditures by the state, the Department of Finance and Administration Division of Accounts shall file the contract document with original signatures and record it in the State of Tennessee Accounting and Reporting System.
- (5) Upon final approval of a no cost contract or a revenue contract, the Department of Finance and Administration Office of Contracts Review shall return the original contract to the subject state agency.

**Authority:** *T.C.A. §§ 4-5-202, 12-4-109 and 12-4-110.*

Rule 0620-3-3-.07 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.07 GENERAL REQUIREMENTS.** All service contracting subject to these rules shall follow the policy set forth in the following general requirements.

- (1) **Amendments** - A contract amendment is a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract. It shall be the practice of the state to enter only into contracts that are complete and thorough. However, during the course of a contract, it may become necessary to change, add to, or delete from the terms and conditions of the contract.

- (a) A contract amendment shall meet the requirements of these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines and shall clearly detail the additions, deletions, and modifications to the subject contract.
  - (b) A contract amendment should be determined by the Commissioner of Finance and Administration to be either within the original scope of work and within the intent and purpose of the original contract; or a logical extension to the original scope of work.
  - (c) If a contract amendment adds to the original base contract scope of work, or extends the contract term (of a contract that did not provide for a term extension), or if a contract amendment increases the maximum liability of a contract entered on the basis of Non-Competitive Negotiation, the head of the procuring agency shall justify the contract amendment in writing and request and obtain the approval of the Commissioner of Finance and Administration. The Department of Finance and Administration shall file such approved requests and the reasons therefore with the Comptroller of the Treasury.
  - (d) A contract amendment shall require the approval of the same officials required for approval of the base contract. If the amendment changes the scope or the terms of the base contract in such a manner as to require additional review by one or more officials in accordance with Rule 0620-3-3-.06(c), said amendment and all subsequent amendments of the contract shall require that approval.
- (2) Authorization to Begin Work - A signed contract affixed with the signature of all officials required for approval of the contract shall authorize a contractor or grantee to commence work on the subject scope of services. No official or employee of the state of Tennessee, except the Commissioner of Finance and Administration, only in cases of emergency, in writing, shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules. The Department of Finance and Administration shall document any such authorization and the reasons therefore and file the documentation with the Comptroller of the Treasury.
  - (3) Proposal Bond - In circumstances deemed appropriate by the procuring state agency, the state may require each proposer in response to a Request for Proposals (RFP) to provide the state with a bond payable to the state in the event that the proposer, if successful, fails to enter into a contract with the state in accordance with the terms of the RFP.
  - (4) Communication and Negotiation - The procuring agency shall conduct such communication as it determines to be in the best interests of the state, provided that any communication, clarification, or negotiation which may take place regarding any service procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more service providers unfair advantage or unfairly enable one or more proposers to improve their proposals as a result.
  - (5) Contract Term - A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state's procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months.
  - (6) Contract with a Corporation - If the contractor is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The state may require that a copy of the corporate charter be submitted prior to contract approval.
  - (7) Contract with Governmental Entities - A contract between a state agency subject to the rules of this chapter and another governmental entity (except another agency of the executive branch of Tennessee state government) shall

contain an adequate description of the duties of each party, a statement of the contract term, and a statement of the maximum amount payable, and shall be drafted to comply with Department of Finance and Administration Office of Contracts Review Policy Guidelines. An agreement between state agencies may be drafted as a contract complying with Department of Finance and Administration Office of Contracts Review Policy Guidelines or may be executed by means of some other instrument to effect the understanding.

- (8) Contract with a State Employee or a Former State Employee - A state agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a state employee.
- (a) For the purposes of applying this rule,
1. an individual shall be deemed a state employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  2. a contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any state employee shall be considered to be a contract with or proposal from the employee; and
  3. a contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a state employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these rules.
- (b) A state employee may be compensated for performing services for a state agency other than the state agency employing the individual (e.g., a state accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-3-2 and not the rules of this chapter.
- (9) Certification of Necessity, Funding, and Contractor Eligibility - The head of any state agency contracting with a service provider outside Tennessee state government shall determine and indicate, by signing the contract or Authorization to Vendor, that:
- (a) the services are in fact needed;
  - (b) the services cannot be satisfactorily or efficiently performed by employees of the state of Tennessee;
  - (c) funds have been appropriated to meet the resulting financial obligations of the state for the services, and the procuring agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and
  - (d) the subject contractor is eligible, subject to these rules and any applicable federal or state requirements, to contract with the state for provision of the subject services.
- (10) Contractor Registration - Proposers need not be registered with the state to make a proposal. However, all service providers with whom the state of Tennessee contracts for services pursuant to these rules shall be registered as required by the Department of Finance and Administration Office of Contracts Review prior to approval of a contract.
- (11) Grantee Audit Requirement - Every person or entity receiving funds pursuant to a grant contract shall cause to be performed an audit of all its programs funded by grant contracts as required by said contracts, however, it is not intended that the existence of more than one grant contract or source of funds for a single grantee shall necessitate more than one audit in a single audit period.



- (12) Hiring of Employees - State employees shall be hired through the merit system of the Department of Personnel. All contracts with an individual and all Departmental Purchase Authorities shall be reviewed for approval by the Commissioner of Personnel to determine compliance with this policy.
- (13) Hold Harmless Prohibition - The state shall not agree by contract to indemnify or hold a contractor harmless for any liability arising from a contractual relationship.
- (14) Incorrect Proposal Information - If the state determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, and the proposal may be rejected.
- (15) Payments - Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by state laws and regulations. Under no conditions shall the state be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before the contract start date specified by the contract or before contract approval by state officials as required by applicable statutes and rules of the state of Tennessee - except, in accordance with Rule 0620-3-3-.07(2), the Commissioner of Finance and Administration shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules.
  - (a) All contracts, in which the state is to make payment(s) to the contractor, shall provide that payments are to be made upon submittal of invoices by the contractor, after performance of the portion of the service which each payment represents, except that, grants may provide for advance payments in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (b) Except as provided in this rule, no payment shall be made for performance under a contract unless an appropriate, procuring agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by appropriate procuring agency staff's written approval of each invoice submitted for payment.
  - (c) A contract subject to these rules may provide for incentive payments. An incentive shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is explicitly based upon contractor performance at a specified level beyond that which is minimally required.
  - (d) A contract subject to these rules shall not provide for the payment of a bonus. A bonus shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is not based on contractor performance at a definitively specified level beyond that which is minimally required.
  - (e) The procuring agency shall maintain adequate documentation to support all payments.
- (16) Performance Bond - In circumstances deemed appropriate by the procuring agency, the state may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these rules.
- (17) Proof of Insurance - As deemed appropriate, the state may require a potential contractor to provide proof of appropriate insurance prior to entering a contract subject to these rules.
- (18) "Responsible Proposer" shall be defined as a proposer that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

- (19) “Responsive Proposer” shall be defined as a proposer that has submitted a proposal that conforms in all material respects to the Request for Proposals.
- (20) Signature Authority - Each state agency shall file, with and in a form acceptable to the Department of Finance and Administration Office of Contracts Review, documentation detailing the actual signature of the head of the agency and the agency head’s signature as written by any other persons authorized to sign service contracting documents on behalf of the agency head.
- (21) Training of State Employees - All contracts with provisions for training of state employees shall require the approval of the Commissioner of Personnel. This rule shall not apply to contracts for systems development that provide for state employee training on the resulting system.
- (22) Travel Reimbursements - Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and rules set forth in the State Comprehensive Travel Regulations as amended. The limits and rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the state of Tennessee at “in-state rates” and for the reimbursement of travel expenses incurred outside the state of Tennessee at “out-of-state rates.”

**Authority:** T.C.A. §§4-5-202, 12-4-109.

Rule 0620-3-3-.08 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.08 SPECIAL CASES.**

- (1) Grant - A Grant shall be defined as a contract used to effect an award of funding or property to a grant recipient or grantee. A Grant shall benefit the general public or some population of the general public. Deliverables pursuant to a Grant Contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.
  - (a) A Grant shall represent one of the following:
    - 1. a contract effecting an award to a nonprofit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;
    - 2. a contract passing through a federal award which specifically identifies by name a grantee or subrecipient; or
    - 3. a contract effecting an award to fund work toward the completion of an activity or program which could not otherwise be more advantageously procured under a fee-for-service type contract - a grant representing this type of award must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.
  - (b) A Grant as defined in this rule shall be made by use of one of two grant contract types as follows:
    - 1. Cost-Reimbursement Grant - a grant contract in which payment(s) to the grantee shall be limited to reimbursement for actual, reasonable, and necessary cost as determined by the state and in accordance with an approved grant budget.

- (i) A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the grantor and the grantee as defined by Department of Finance and Administration Policy 22.
  - (ii) A Cost Reimbursement Grant contract shall detail the state approved Grant Budget.
    - (I) A Grant Budget shall be defined as a schedule itemizing one or more specific activities or purposes under the Grant along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant and that total shall equal the maximum liability of the Grant.
    - (II) A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.
  - (iii) The grantor state agency shall conduct analysis and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated.
  - (iv) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non-competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.
  - (v) A Cost Reimbursement Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.
2. Endowment Grant - a Grant contract effecting an award and conveyance of funds or property to a grantee for a particular purpose such that will benefit the general public or some population of the general public.
- (i) An Endowment Grant's essential requisites are:
    - (I) the state's authority to make the Grant;
    - (II) the intention of the state to make an endowment award free of conditions beyond the specified purpose of the grant;
    - (III) the state's offer of an endowment award to the grantee;
    - (IV) the grantee's acceptance of the endowment award; and
    - (V) the grantee's fulfillment of the Grant's specific purpose.
  - (ii) An Endowment Grant shall result in the provision of services that are ancillary to the operation of state or federal programs and do not involve the management and implementation of a state or federal program.
  - (iii) An Endowment Grant shall not create a subrecipient relationship between the state and the grantee as defined by Department of Finance and Administration Policy 22.

- (iv) An Endowment Grant must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.
  - (v) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non-competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.
  - (vi) An Endowment Grant shall cite the state's authority to make the Grant.
  - (vii) An Endowment Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (2) No Cost Contract - A no cost contract shall be used to formalize the exchange of services which does not result in a pecuniary obligation between the state and the contractor. Prior to proceeding with any procurement of services under a no cost contract, the procuring agency shall obtain approval of the Commissioner of Finance and Administration. If the request to enter into a no cost contract is approved, the agency shall proceed with the procurement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (3) Revenue Contract - A revenue contract shall be used to formalize an agreement in which a state agency provides specific deliverable services for monetary compensation. Prior to proceeding with any revenue contract negotiation, the state agency must obtain approval of the Commissioner of Finance and Administration. If the request to enter into a revenue contract is approved, the agency shall proceed with the agreement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.

**Authority:** *T.C.A. §§ 4-5-202, 12-4-109.*

Rule 0620-3-3-.09 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.09 DELEGATED AUTHORITY.** A Delegated Authority to make specific service agreements without further approval shall be effective upon the approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury. No grant, loan, purchase, or agreement shall be initiated and no obligation shall be incurred under a Delegated Authority prior to the delivery of an approved copy of the authority to the subject state agency.

- (1) Delegated Grant Authority - A Delegated Grant Authority shall give approval to a state agency to issue grants for an individual program within specified limits and guidelines.
  - (a) A Delegated Grant Authority may be approved where:
    - 1. the program needs and category of services are such that adequate guidelines can be developed to direct the agency issuing a number of similar grants; and
    - 2. the individual grants involved are of such uniformity that there is little necessity or practicality in individual review by the Department of Finance and Administration Office of Contracts Review.
  - (b) A Delegated Grant Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.

- (c) No changes shall be made to the approved grant form detailed by the Authority without a formal amendment of the approved Delegated Grant Authority.
- (2) Delegated Loan Authority - A Delegated Loan Authority shall give approval to a state agency to loan funds and to enter into loan agreements with individuals or organizations in accordance with a state or federally legislated program. A Delegated Loan Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.
- (3) Delegated Purchase Authority - A Delegated Purchase Authority shall give approval to a state agency to purchase services for an individual program, within specified limits and guidelines.
  - (a) A Delegated Purchase Authority may be approved where all of the following are true:
    - 1. the subject service needs are sporadic, and it is not possible to determine in advance their volume, delivery, or exact costs;
    - 2. it is impractical to award one or more fee-for-service contracts for the category of services with compensation based upon unit or milestone rates;
    - 3. the program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in procuring services;
    - 4. the procurement terms, conditions, and criteria to be followed by the agency in conducting each purchase shall be of such uniformity that the approval by the Commissioner of Finance and Administration of each individual purchase is not necessary;
    - 5. the individual purchases involved are such that individual review by the Department of Finance and Administration Office of Contracts Review is impractical; and
    - 6. the procuring agency staff has made appropriate inquiries and assured the fairness of the maximum rates detailed in the authority.
  - (b) A Delegated Purchase Authority shall set forth all provisions and limitations required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.
  - (c) All purchases made pursuant to a Delegated Purchase Authority shall be made by the use of a written authorization to vendor approved by the Commissioner of Finance and Administration. No changes shall be made to the approved authorization to vendor without a formal amendment of the approved Delegated Purchase Authority.
- (4) Other Delegated Authority - Upon the establishment of specific guidelines, criteria, and procedures, other forms of Delegated Authority may be used to give approval allowing a state agency to enter agreements for an individual program within specified limits and guidelines. Notwithstanding the foregoing, all delegated authorities shall conform with the policy expressed in these rules.

**Authority:** *T.C.A. §§ 4-5-202, 12-4-109.*

Rule 0620-3-3-.10 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-10 CONTRACT MANAGEMENT.** The procuring state agency shall be responsible for the management of its contracts.

*Authority:* T.C.A. §§ 4-5-202, 12-4-109.

Rule 0620-3-3-.11 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.11 CONTRACT TERMINATION.** If a procuring agency determines it to be in the best interests of the state to terminate a contract for service before the contract end date, either for cause or convenience, the head of the procuring agency shall request and obtain the approval of the Commissioner of Finance and Administration prior to any notice of contract termination. The Department of Finance and Administration shall file approved requests for contract termination with the Comptroller of the Treasury.

*Authority:* T.C.A. §§ 4-5-209, 12-4-109.

Rule 0620-3-3-.12 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.12 EXCEPTIONS TO RULES.** The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.

Authority: Tennessee Code Annotated, §§ 4-5-202, 12-4-109.

Rule 0620-3-3-.13 is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

**0620-3-3-.13 APPENDIX I OF RULE 0620-3-3-.04.** A Protest Bond may be presented to the state in form and substance compliant with the following Protest Bond format. Any Protest Bond presented to the state that represents a deviation from the following format shall be considered for acceptability by the state on a case-by case basis.

**PROTEST BOND**

The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power-of-Attorney for the Surety’s Attorney-in-Fact attached.

**KNOW ALL BY THESE PRESENTS:**

That we,

\_\_\_\_\_  
(Name of Protestor)

\_\_\_\_\_  
(Address of Protestor)

as the Party filing a protest of the State of Tennessee’s determination(s) regarding a Request for Proposals (RFP) process, hereinafter called the Protestor, and

---

(Name of Surety)

---

(Address of Surety)

as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of

---

(Dollar Amount of Bond)

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:**

**WHEREAS**, the Obligee has issued a Request for Proposals bearing the RFP Number:

(RFP Number)

**AND**, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;

**AND**, the signature of an attorney or the Protestor on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer’s knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

**AND**, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Obligee with a notice of protest regarding the subject RFP process;

**AND**, the Obligee shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;

**AND**, if the Protestor appeals the affected agency head’s determination on the protest to the Review Committee, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Review Committee as to its disposition.

**NOW, THEREFORE**, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Review Committee that:

1. a request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Review Committee, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);
2. the Protestor has brought or pursued the protest in bad faith; or
3. the Protestor’s notice of protest does not state on its face a valid basis for protest.

In which case, this obligation or bond shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.

**IN WITNESS WHEREOF** the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,

on this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ .

**WITNESS:**

\_\_\_\_\_  
(Name of Protestor)

\_\_\_\_\_  
(Authorized Signature of Protestor)

\_\_\_\_\_  
(Name and Title of Signatory)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Attorney-in-Fact)

\_\_\_\_\_  
(Name of Attorney-in-Fact)

\_\_\_\_\_  
(Tennessee License Number of Surety)

**Authority:** *T.C.A. §§ 4-5-202, 12-4-109.*

**REPEALS**

Regulation 0620-3-3-.14, Appendix I of Rule 0620-3-3-.06, is repealed.

**Authority:** *T.C.A. §§ 4-5-202, 12-4-109.*

Regulation 0620-3-3-.15, Appendix II of Rule 0620-3-3-.04, is repealed.

**Authority:** *T.C.A. §§ 4-5-202, 12-4-109.*

The proposed rules set out herein were properly filed in the Department of State on the 8th day of November, 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 30th day of March, 2002. (11-15)



**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180  
BANK DIVISION**

**CHAPTER 0180-5  
PUBLIC NOTICE OF APPLICATION FOR A NEW BANK CHARTER  
OR A BRANCH BANK**

Presented herein are proposed amendments of the Department of Financial Institutions submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Room 408 of the John Sevier Building located at 500 Charlotte Avenue, Nashville, Tennessee 37243-0705 and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments contact: Tina G. Miller, Staff Attorney, Tennessee Department of Financial Institutions, 27th Floor William R. Snodgrass Tennessee Tower, 312 8th Avenue North, 615/532-1030.

The text of the proposed amendments is as follows:

**AMENDMENTS**

The Table of Contents, Section 0180-5-.01 is amended by adding “/Notification” after the word “Application” so that it shall read:

**0180-5-.01. PUBLIC NOTICE OF APPLICATION/NOTIFICATION FOR A NEW BANK CHARTER OR A BRANCH BANK.**

Paragraph (1) of Rule 0180-5-.01 Public Notice of Application for a New Bank Charter or a Branch Bank is amended by deleting the rule in its entirety and substituting the following language so that the rule, as amended, shall be titled Public Notice of Application/Notification for a New Bank Charter or a Branch Bank and shall read as follows:

- (1) Within three (3) days, before or after, the filing date of an application for a new bank charter or an application or notification for a branch bank, the applicant must publish one (1) time in a newspaper of general circulation in the community where the facility is to be established and, in the case of a branch bank application/notification, one (1) time in a newspaper of general circulation in the community where the applicant bank’s main office is located, if they are not the same, a notice containing the following:
  - (a) the name, or proposed name, of the applicant
  - (b) the subject matter of the application/notification
  - (c) the specific location of the proposed facility
  - (d) the names of the organizers of the proposed facility, if a new bank

- (e) the proposed name of a branch facility, if it will be different from the bank's chartered name.

**Authority:** *T.C.A. §§45-1-107, 45-2-204(d) and 45-2-614.*

Paragraph (1) of Rule 0180-5-.02 Required Statement is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read:

- (1) Any public notice required by the Department under Title 45, Chapters 1 and 2, shall include the following statement:

“Any person wishing to comment on or protest this application/notification or any person having information which may have a bearing on the fitness of any of the organizers or proponents of this application/notification may file comments with the Commissioner of Financial Institutions in Suite 402, John Sevier Building, 500 Charlotte Avenue, Nashville, Tennessee 37243, or telephone the Department of Financial Institutions at 615/741-5018. Written or telephonic notice must be made to the Commissioner within fifteen (15) days of this publication.”

**Authority:** *T.C.A. §§45-1-107, 45-2-204(d) and 45-2-614.*

Rule 0180-5-.03 Notice Required by the Federal Deposit Insurance Corporation is amended by deleting the number “303.14” and replacing it with the number “303.44” so that, as amended, it shall read:

If the statement specified in 0180-5-.02 is attached to the public notice required by Section 303.44 of the Federal Deposit Insurance Corporation's Rule and Regulations, that publication will satisfy the Department's requirements for public notices as well.

**Authority:** *T.C.A. §§45-1-107.*

Rule 0180-5-.04 Proof of Notice is amended by adding the sentence “a certification from the publisher is not required” so that as amended, it shall read:

Immediately after publication, the applicant shall furnish the Department with a clipping of the notice as published with the date of the publication on the clipping. A certification from the publisher is not required.

**Authority:** *T.C.A. §§45-1-107, 45-2-204(d) and 45-2-614.*

The proposed rules set out herein were properly filed in the Department of State on the 30th day of November, 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 30th day of March, 2002. (11-43)

**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180  
BANK DIVISION**

**CHAPTER 0180-7**

**RULES OF PRACTICE: APPLICATIONS, INSTRUCTIONS, FORMS, REPORTS OF STATE  
BANKS AND SCHEDULE OF APPLICATION FEES FOR STATE BANKS, BIDCOS, SAVINGS BANKS  
AND TRUST COMPANIES**

Presented herein are proposed amendments of the Department of Financial Institutions submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Room 408 of the John Sevier Building located at 500 Charlotte Avenue, Nashville, Tennessee 37243-0705 and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments contact: Tina G. Miller, Staff Attorney, Tennessee Department of Financial Institutions, 27th Floor William R. Snodgrass Tennessee Tower, 312 8th Avenue North, 615/532-1030.

The text of the proposed amendments is as follows:

**AMENDMENTS**

The Table of Contents, Section 0180-7-.03 and Section 0180-70.04 are amended by adding “/Notification” after the word “Application” so that they shall read:

0180-7-.03. Application/Notification Procedure for Branches of Banks Chartered by the Department.

0180-7-.04. Application/Notification Procedure for a Tennessee-Chartered Bank to Change the Location of its Main Office or a Branch.

Paragraph (12) of Rule 0180-7-.02 Application Procedure for New Bank Charter is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read:

- (12) All subscription proceeds shall be placed in an escrow account. The escrow agreement must be reviewed by the Commissioner. Funds may not be removed from the escrow account prior to the issuance of the Certificate of Authority unless written approval has been received from the Commissioner.

**Authority:** T.C.A. §§45-1-103(10), 45-1-107, 45-1-120, 45-2-202, 45-2-203, 45-2-204, 45-2-205, 45-2-206, 45-2-212, 45-2-214, 45-2-215 and 45-2-1603.

Rule 0180-7-.03 Application Procedure for Branch Bank is amended by deleting the rule in its entirety and substituting the following language so that the rule, as amended, shall be titled Application/Notification Procedures for Branches of Banks Chartered by the Department and shall read as follows:

- (1) The bank applicant shall file with the Commissioner an application/notification to establish a branch office, branch bank or branch facility as defined by the Commissioner, using the form provided by the Department.

- (2) The applicant shall give public notice of the application/notification as provided by Chapter 0180-5 of these rules and shall give notice to other banks as the Commissioner may require. Anyone desiring to comment on or to protest the application/notification may do so in accordance with the procedure set forth in Rule 0180-7-.02(8). If the proposed branch will operate under a different name from the bank, the operational name must also be included in the public notice.
- (3) The Commissioner shall conduct such investigation and examination with respect to the application/notification as he or she may require and shall send written notice of the decision on the application/notification to the applicant.
- (4) If the branch is to be located outside the State of Tennessee, the Department will submit a copy of the application/notification to the appropriate state regulatory agencies for comments.
- (5) The applicant shall submit a check payable to the Treasurer, State of Tennessee for the branch fee in accordance with Rule 0180-7-.08.
- (6) Banks with a regulatory rating of one (1) or two (2) may file written notification of a branch in lieu of an application. A copy of the clipping evidencing public notice must be furnished to the Department. The branch will be deemed approved at the expiration of the public notice comment period as provided by Rule 0180-5-.02, unless the commissioner objects or requests additional information. If the commissioner requests additional information prior to the expiration of the public comment period, the commissioner shall then have fifteen (15) calendar days from the receipt of the additional information in which to act upon the notification.
- (7) For an application to establish a branch from any other bank, the application shall be deemed to have been approved by the commissioner unless disapproved within ninety (90) calendar days after the submission of the application. The Commissioner may extend the ninety (90) day period if additional information is requested.
- (8) A state-chartered bank may also establish a mobile branch to be operated within specifically approved locations. A mobile branch means a branch of the bank that does not have a single, permanent site, and includes a vehicle that travels to various locations within an approved area to enable customers to conduct their banking business. If a mobile branch seeks approval to operate outside Tennessee, any such requests will be subject to the laws of the foreign state.

**Authority:** *T.C.A. §§ 45-1-107, 45-2-614 and 45-2-601.*

Rule 0180-7-.04 Application Procedure to Move Main Office or to Move Branch is amended by deleting the rule in its entirety and substituting the following language so that the rule, as amended, shall be titled Application/Notification Procedure for a Tennessee-Chartered Bank to Change the Location of its Main Office or a Branch and shall read as follows:

- (1) In an effort to streamline the application/notification process the Department will look to the appropriate federal regulator to determine what application/notification should be filed by a state-chartered bank to change the location of its main office or a branch.
- (2) The applicant shall file an application/notification with the Commissioner.
- (3) The applicant shall give such public notice of the application/notification as the Commissioner may require. The public notice must include: the statement required by Rule 0180-5-.02; the name and present location of the branch or main office; and, the name and proposed new location of the branch or main office upon relocation. Anyone desiring to comment on or to protest the application/notification may do so in accordance with the procedures set forth in Rule 0180-7-.02 (8).

- (4) The Commissioner shall have such investigation and examination conducted with respect to the application/notification as he or she may require.
- (5) The Commissioner shall make a determination on the application/notification on the basis of the factors set forth in T.C.A. § 45-2-218; he or she shall send written notice of the decision on the application/notification to the applicant bank.
- (6) Banks with a regulatory rating of one (1) or two (2) may file written notification of a main office or branch relocation. A copy of the clipping evidencing public notice must be furnished to the Department. The relocation will be deemed approved at the expiration of the public notice comment period as provided by Rule 0180-5-.02, unless the commissioner objects, or requests additional information. If the commissioner requests additional information prior to the expiration of the public comment period, the commissioner shall then have fifteen (15) calendar days from the receipt of the additional information in which to act upon the notification for relocation.
- (7) For an application to relocate a branch or main office from any other bank, the application shall be deemed to have been approved by the commissioner unless disapproved within ninety (90) calendar days after the submission of the application. The commissioner may extend the ninety (90) day period if additional information is requested.

**Authority:** T.C.A. §§ 45-1-107 and 45-2-218.

Paragraph (1) of Rule 0180-7-.05 Application Procedure For Amendment of Charter, is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (1) In accordance with T.C.A. §45-2-218, a state bank shall apply to the Commissioner to amend its charter. The applicant bank shall file the original and two (2) copies of the proposed amendment with the Commissioner for certification. If shareholder approval is required by T.C.A. §45-2-218, certified minutes of the shareholders meeting evidencing approval of the amendment should be submitted with the application. The applicant shall also submit a check payable to the Secretary of State for the required filing fee.

**Authority:** T.C.A. §§4-5-1-107 and 45-2-218.

Paragraph (3) of Rule 0180-7-.05 Application Procedure for Amendment of Charter, is amended by deleting the paragraph in its entirety.

**Authority:** T.C.A. §§45-1-107 and 45-2-218.

Paragraph (3) of Rule 0180-7-.06 Formation of Interim Banks is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (3) Application Procedure. Application forms for the creation of an interim bank may be obtained from the Department of Financial Institutions. The application should include a description of the reorganization, including the reasons therefor. Financial information of the incorporators need not be furnished if they are executive officers or directors of the existing bank. Public notice shall be made in accordance with Chapter 0180-5.

**Authority:** T.C.A. §§45-1-107, 45-2-204(c), 45-2-204(e) and 45-2-1403.

Paragraph (6) of Rule 0180-7-.06 Formation of Interim Banks, is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (6) Interim Bank as Survivor. If, after the merger or consolidation, the interim bank, rather than the existing bank, is the surviving bank, the certificate of authority issued to the existing bank shall be endorsed over to the surviving bank and the surviving bank shall therefore have the age of the existing bank.

**Authority:** T.C.A. §§45-1-107, 45-2-204(c), 45-2-204(e) and 45-2-1403.

Paragraph (1) of Rule 0180-7-.07 Forms is amended by deleting the paragraph it in its entirety and substituting the following language so that, as amended, it shall read:

- (1) The Commissioner may provide forms which can be used for the appropriate application procedure. In most cases, the Department accepts the Federal application form in lieu of the Department’s form.

**Authority:** T.C.A. § 45-1-107.

Rule 0180-7-.08 Fees, is amended by deleting the rule in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (1) Following are the fees charged for each particular type of transaction:
  - (a) Application to organize a state bank, state BIDCO, state savings bank, state trust company or state credit card bank.....\$8,500.00
  - (b) Application/Notification to establish a branch office for a state bank, state BIDCO, state savings bank .....\$500.00
  - (c) Application/Notification to relocate a main office or branch by a state bank, state BIDCO, state savings bank.....\$300.00
  - (d) Application to relocate an office of a state trust institution.....\$300.00
  - (e) Application to form an interim bank.....\$1,000.00
  - (f) Application for a merger where the resulting institution will be a state-chartered bank, state-chartered savings bank, state trust company or state BIDCO and any change of control application.....\$3,000.00
  - (g) Application for an acquisition where the resulting institution will be a state-chartered bank, state-chartered savings bank, state BIDCO or state trust company.....\$3,000.00
  - (h) Application to convert to a state bank, state savings bank or state trust company.....\$3,000.00
  - (i) Application for a purchase and assumption transaction of less than substantially all of the assets of a bank by a state-chartered bank, savings bank, or a state BIDCO.....\$500.00
  - (j) Licensing fee per location for a state BIDCO.....\$500.00

- (k) Application to engage directly or indirectly through a subsidiary in securities activities by a state bank, savings bank or state trust company.....\$1,000.00
  - (l) Filing fee for a state trust institution to establish or acquire a trust of office.....\$500.00
  - (m) Application for private trust company status.....\$1,000.00
  - (n) Annual certification to maintain status as an exempt private trust company.....\$250.00
  - (o) Filing fee for conversion from private trust company to public trust company.....\$8,500.00
- (2) If a process involves more than one transaction, the institution will be charged a separate fee for each application/ notification.

**Authority:** T.C.A. §§ 45-1-107, 45-1-118, 45-2-103, 45-8-204, 45-2-215, 45-2-218, 45-2-614, 45-2-1303, 45-2-1304, 45-2-1307, 45-2-1402, 45-2-1403, 45-2-1802, 45-2-1803, 45-2-1902, 45-3-1002, 45-3-1003, 45-8-207, 45-8-208, 45-8-211, 45-8-214, 45-11-105, 45-14-103, 45-14-104, 45-14-110, 45-14-111, 45-14-113 and Chapter 112 of the Public Acts of 1999.

Rule 0180-7-.09 Branch Name Usage is amended by adding a new subparagraph (a) and redesignating the remaining subparagraphs accordingly. Subparagraph (a) will read as follows:

- (a) Disclose, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution. The institution should exercise care that the signs and advertising do not create a deceptive and/or misleading impression.

**Authority:** T.C.A. §§ 45-1-102(a), 45-1-107(a)(5), 45-1-107(h), 45-1-124(d), 45-2-205, 45-2-614, 45-2-1407, 45-2-1408, 45-3-115, 45-3-202(b)(5), 45-3-209 and 48-14-101.

The proposed rules set out herein were properly filed in the Department of State on the 30th day of November, 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 30th day of March, 2002. (11-44)

**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180  
BANK DIVISION**

**CHAPTER 0180-20  
RECOVERY OF THE COSTS OF EXAMINATION AND SUPERVISION  
OF CERTAIN FINANCIAL INSTITUTIONS**

Presented herein are proposed amendments of the Department of Financial Institutions submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Room 408 of the John Sevier Building located at 500 Charlotte Avenue, Nashville, Tennessee 37243-0705 and in the Department of State, Fifth Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, Tennessee 37219-0310, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments contact: Tina G. Miller, Staff Attorney, Tennessee Department of Financial Institutions, 27th Floor William R. Snodgrass Tennessee Tower, 312 8th Avenue North, 615/532-1030.

The text of the proposed amendments is as follows:

**AMENDMENTS**

Paragraph (5) of Rule 0180-20-.02 is amended by inserting the words “salary and” after the word “such” and before the word “expenses” in the paragraph so that the paragraph as amended, shall read:

- (5) Costs means the average salary and actual travel expenses directly attributable to the field staff examining or investigating the financial institution and such salary and expenses of any supervisory or other staff required as a result of the findings of an examination or investigation.

**Authority:** T.C.A. § 45-1-118.

Paragraph (8) of Rule 0180-20-.02 is amended by deleting the paragraph in its entirety.

**Authority:** T.C.A. §45-1-118.

Paragraph (1) if Rule 0180-20-.03 Special Assessments is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read:

- (1) In addition to all other costs, fees and assessments imposed under Title 45 of the Tennessee Code Annotated, the commissioner may impose a special assessment upon any financial institution for the purpose of recovering those costs of the department which, as determined by the Commissioner, exceed those costs normally incurred in the supervision of a financial institution in a sound financial condition and operating legally. Provided however that if the department is required to periodically examine the financial institution, the special assessment shall not include the costs of the department’s routine periodic examination of the financial institution.



*Authority:* T.C.A. §45-1-118.

Paragraph (2) of Rule 0180-20-.03 Special Assessments is amended by deleting the words “an itemized” after the word “include” and substituting the word “a” so that, as amended, it shall read:

- (2) To impose a special assessment, the commissioner must notify the financial institution in writing and include a statement showing the nature of the costs to be recovered by the department and the dates on which the Department incurred such costs.

*Authority:* T.C.A. §45-1-118.

Paragraph (3) of Rule 0180-20-.03 Special Assessments is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, it shall read:

- (3) Payment of all special assessments shall be due no later than thirty (30) days from the date of the invoice of such assessment.

*Authority:* T.C.A. §45-1-118.

The proposed rules set out herein were properly filed in the Department of State on the 30th day of November 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 30th day of March, 2002. (11-45)

**DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180  
BANK DIVISION**

**CHAPTER 0180-30  
RULES PERTAINING TO THE ASSESSMENT OF THE ANNUAL FEE FOR NON-DEPOSITORY TRUST  
COMPANIES**

Presented herein are proposed rules of the Department of Financial Institutions submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in Room 408 of the John Sevier Building located at 500 Charlotte Avenue, Nashville, Tennessee 37243-0705 and in the Department of State, 8th Floor, William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee 37243-0293, 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 proposed rules contact: Marsha P. Anderson, Staff Attorney, Tennessee Department of Financial Institutions, 27th Floor William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee 37243-0293, 615/532-1030.

## NEW RULES

### TABLE OF CONTENTS

0180-30-.01 Annual Fee for Non-depository Trust Companies.

#### **0180-30-.01. ANNUAL FEE FOR NON-DEPOSITORY TRUST COMPANIES.**

The Department of Financial Institution's budget is accounted for on a fiscal year basis, July 1 through June 30. Nondepository trust companies regulated by the Department of Financial Institutions must pay, by July 1 of each year, the annual fee set forth in T.C.A. §45-1-118(c)(2), for each office or place of business operated by such trust company. Any trust company that is a trust company on the first day of the fiscal year shall pay the annual fee for that fiscal year, by the following July 1, and the fee shall not be prorated for any reason.

*Authority:* T.C.A. §§45-1-107(h); 45-1-118(c)(2).

The proposed rules set out herein were properly filed in the Department of State on the 30th day of November, 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 30th day of March, 2002. (11-46)

**TENNESSEE BUREAU OF INVESTIGATION - 1395**

**CHAPTER 1395-1-1  
TENNESSEE CRIME INFORMATION CENTER**

Presented herein are proposed rules of the Tennessee Bureau of Investigation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Professional Standards Unit of the Tennessee Bureau of Investigation to promulgate these rules without a rulemaking hearing, unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Bureau of Investigation Professional Standards Unit, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and the Department of State, Division of Publications, Suite 1700 James K. Polk Building, Nashville, Tennessee 37243-0310. The petition must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For complete copies of the entire text of the proposed rules, please contact David Jennings, Executive Assistant, Professional Standards Unit, Tennessee Bureau of Investigation, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and telephone (615) 744-4204.

The text of the proposed rules is as follows:

**PROPOSED RULES  
OF THE  
TENNESSEE BUREAU OF INVESTIGATION  
  
CHAPTER 1395-1-1  
TENNESSEE CRIME INFORMATION CENTER  
AMENDMENTS**

This chapter is amended by repealing Rule 1395-1-1 in its entirety and substituting the following language so that as amended the rule shall read:

**TABLE OF CONTENTS**

1395-1-1-.01	Short Title	1395-1-1-.05	Scope of Rules
1395-1-1-.02	Statement of Intent and Application	1395-1-1-.06	Tennessee Crime Information Enforcement System (TIES)
1395-1-1-.03	Definitions	1395-1-1-.07	Automated Fingerprint Identification System (AFIS)
1395-1-1-.04	Applicability of Federal and State Law, Rules, Regulations and Guidelines	1395-1-1-.08	Certification of Records

**1395-1-1-. 01    SHORT TITLE.** These rules shall be known and may be cited as the Rules of the Tennessee Crime Information Center.

*Authority:* T.C.A. §§ 38-10-103 and 38-6-107.

**1395-1-1-. 02 STATEMENT OF INTENT AND APPLICATION.**

- (1) Intent - It is the intent of the Legislature to accumulate in one place all of the vital information relating to crimes, criminals and criminal activities generated by the actions of all state and local law enforcement agencies performing duties in relation thereto, thereby establishing a criminal justice information system for substantive use by all participants and statistical analysis and use by the government and private sectors. It requires the Director of the Tennessee Bureau of Investigation to construct the crime data elements by specifying the content and form of reports and to establish the communications system for intrastate submission and sharing of the data, by agreements between the Tennessee Bureau of Investigation, Federal Bureau of Investigation and National Law Enforcement Telecommunications Systems.
- (2) Application - To make the system complete and effective, the Legislature requires the participation of all state, county and municipal and correctional agencies and courts. The participation is made uniform, efficient and effective by the promulgation and adoption of rules by the Director of the Tennessee Bureau of Investigation.
- (3) System Scope - As mandated, TBI will design, procure, operate, manage and control computer hardware and associated software to enable it to establish a system for the intrastate communication and exchange of all vital information, including statistical analysis thereof, relating to crime, criminals and criminal activity. It will, at a minimum:
  - (a) Provide a communications network with adequate computer hardware and software for use by law enforcement agencies;
  - (b) Provide certainty of identification of people with their criminal activity and records;
  - (c) Create a data base for the storage, management and distribution of the vital crime information for maximum interactive and relational use; and
  - (d) Comply with all state and federal laws relating to the privacy and security of the data.
- (4) Interaction of Data Programs - It is the intent of the Tennessee Bureau of Investigation that this reporting and operating system be fully compatible with the requirements of all similar Federal programs. The duties required of all state and local agencies which participate in the criminal justice system are specified and regulated by numerous statutes and laws relating to the various agencies. It is not the intent of the rules promulgated herein to create new duties or activities, or to change existing required duties, but rather to provide a more precise, uniform and effective manner in which the information generated and used by the various agencies in their operations may be reported, collected, managed and distributed timely and efficiently for maximum use and effectiveness by all agencies having need thereof while maintaining the integrity of actions and files of all participating agencies.
- (5) Control - It is the intent of the Tennessee Bureau of Investigation to ensure that this reporting system fully complies with all federal and state constitutional, statutory, and case law protecting and regulating the rights of privacy and other individual rights.

**Authority:** *T.C.A. §§ 38-6-109 and 38-10-101 through 103.*

**1395-1-1-. 03 DEFINITIONS.**

- (1) Administration of Criminal Justice- The performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused person or criminal offenders; criminal identification activities; and the collection, storage, and dissemination of criminal history records and crime data information.
- (2) AFIS- Automated Fingerprint Identification System that contains the complete Bureau fingerprint files, which

provide the certainty of positive identification of every criminal history, and the associated hardware/software required to manage this data.

- (3) Bureau- Tennessee Bureau of Investigation (TBI).
- (4) CFR- Code of Federal Regulations
- (5) CHRI- Criminal History Record Information in computerized form.
- (6) CHR- Criminal History Record of a person who has been arrested and charged with having committed a criminal offense.
- (7) Criminal Justice Agency- Means (a) courts; or (b) a governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocate a substantial part of its annual budget to the administration of criminal justice (more than 50%) or performs a legally authorized function which results in arrest of accused persons and/or institution of criminal charges. State and Federal Inspector General offices are included.
- (8) Criminal Justice Information- Information received, generated, collected, modified, or artificially created by criminal justice agencies that is needed for the performance of their legally authorized functions. This includes, but is not limited to, information on: wanted persons, stolen property, criminal histories, commencement and termination of prosecution, identification of criminal acts and conduct; and information compiled in the course of the investigation of crimes that are known or believed on "justifiable suspicion" or reasonable grounds to have occurred, or to be in the planning or conspiratorial process, including information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor criminal activity, and information artificially created from the analysis and combination of other data.
- (9) CJIS- Criminal Justice Information Services, maintained by the FBI.
- (10) CTA- Control Terminal Agency maintained by the TBI and approved by the FBI/NCIC for the State of Tennessee for control of the TIES network.
- (11) Director- The Director of the TBI.
- (12) Full Access- A TIES agency which makes entries into NCIC and TCIC files.
- (13) LAN- Local Area Network.
- (14) Law Enforcement Agency- A governmental agency having statutory power of arrest whose primary function is that of detection, apprehension, and institution of prosecutions and which allocates more than fifty percent (50%) of its budget to the administration of criminal justice. Includes all police and sheriffs departments and offices.
- (15) NCIC- National Crime Information Center, operated by the FBI.
- (16) NIBRS- National Incident Based Reporting System.
- (17) NIST - National Institute of Standards and Technology.
- (18) NLETS- National Law Enforcement Telecommunications System is a nonprofit incorporated organization made up of representatives of law enforcement agencies from each of the fifty (50) states, District of Columbia, Puerto Rico, and several federal law enforcement agencies.
- (19) Non-Terminal Agency- An agency accessing the TIES by means of a Terminal Agency.

- (20) POST- Police Officer Standards and Training.
- (21) Query-Only Access- A TIES agency that is programmatically prohibited from making entries into the NCIC and TCIC files.
- (22) Satellite- A Terminal Agency accessing the TIES through another agency's computer.
- (23) SID- State Identification Number, a unique identification number assigned by the TBI to each person for whom a criminal history is established pursuant to a fingerprint identification, or a number assigned to any other person for whom a file is required to be maintained by TBI pursuant to law but is not based upon a fingerprint identification.
- (24) TCIC- Tennessee Crime Information Center, operated by the TBI and required by Chapter 10 of Title 38 of the Tennessee Code Annotated.
- (25) Terminal Agency- An agency accessing the TIES by means of a computer system or terminal.
- (26) TIBRS- Tennessee Incident Based Reporting System.
- (27) TICIC- Tennessee Internet Crime Information Center.
- (28) TIES- Tennessee Information Enforcement System is a hardware/software system dedicated to linking law enforcement agencies with one another and/or with databases and transmitting law enforcement information.
- (29) TRAP- Tennessee Repository for the Apprehension of Persons is an automated tracking mechanism to assist in the apprehension and subsequent prosecution of fugitives from justice.
- (30) UCR- Uniform Crime Reporting, operated by the FBI.
- (31) WAN- Wide Area Network.

**Authority:** *T.C.A. §§38-6-109, 38-6-116, and 38-10-101 through 103.*

**1395-1-1-. 04 APPLICABILITY OF FEDERAL AND STATE LAWS, RULES, REGULATIONS AND GUIDELINES.**

- (1) The operations of the Tennessee Crime Information Center and all of its component systems are subject to and controlled by the federal and state constitutions, all applicable federal and state law, all rules, regulations and guidelines promulgated by NCIC and NLETS, and these rules.
- (2) The system design and operation shall protect the integrity, confidentiality, and privacy of crime data and information in the transmission, storage and use modes.
- (3) The following minimum standards will be followed:
  - (a) Prevention of willful disclosure or delivery to persons not authorized by law to receive or handle the data; and
  - (b) Use of facilities, equipment or personnel which would directly expose the information to unauthorized persons or place the equipment and facilities within the control of unauthorized persons who could gain

unauthorized access to the data.

**Authority:** *T.C.A. §§ 38-6-102(e), 38-10-103, 38-10-103, and 38-10-107.*

**1395-1-1-. 05 SCOPE OF RULES.**

- (1) These rules and regulations govern the generation, reporting (collecting), management, analysis and dissemination of vital information and statistics relating to crime, criminals, and criminal activity, including uniform crime reports, and the system of communication to accomplish this.
- (2) These rules and regulations govern the procedures for the official attestation, sealing, and certification of records when required or authorized by law.

**Authority:** *T.C.A. §§ 38-6-102(e), 38-6-101, 38-10-103, and 38-6-107.*

**1395-1-3-. 06 TENNESSEE INFORMATION ENFORCEMENT SYSTEM (TIES).**

- (1) All of the official rules, regulations and operating procedures of the FBI, NCIC and NLETS are hereby adopted and made applicable to the operation of TIES.
- (2) Compliance- All Agencies having access to TIES as terminal or satellite terminal agencies shall comply with all rules, regulations and guidelines of NCIC, NLETS and TCIC.
- (3) Access- Only statutorily authorized agencies will be permitted to connect computer devices to the TIES. Terminals of statutorily authorized agencies not meeting the definition of a criminal justice or law enforcement agency will be limited to the contribution and acquisition of the data authorized by statute for said agencies and prohibited from accessing NCIC and NLETS terminals and data bases, which would be in violation of laws and rules governing these agencies. All statutorily authorized agencies will meet the following criteria:
  - (a) Equipment- All terminal equipment and software interfaced to TIES and constituting a part of TIES shall be compatible, as determined by TBI, with the TIES equipment and protocol.
  - (b) Classification of Agencies- Agencies interfacing computer terminals to the TIES or receiving information from TCIC are divided into the following nine classes.
    1. Class One shall consist of governmental law enforcement agencies or criminal justice agencies which meet the criminal justice agency definition and which operate terminals on a continuous basis, twenty-four (24) hours a day, seven (7) days a week. These agencies have full access and are directly connected to TBI.
    2. Class Two shall consist of governmental law enforcement agencies or criminal justice agencies or criminal justice agencies which meet the criminal justice agency definition and which may or may not operate terminals on a continuous basis, twenty-four (24) hours a day, seven (7) days a week. These agencies have query-only access and are directly connected to TBI.
    3. Class Three shall consist of governmental law enforcement agencies or criminal justice agencies which meet the criminal justice agency definition and which operate terminals on a continuous basis, twenty-four (24) hours a day, seven (7) days a week. These agencies have full access and are connected as Satellite Agencies to TBI through another agency's computer system.
    4. Class Four shall consist of governmental law enforcement agencies or criminal justice agencies which meet the criminal justice agency definition and which may or may not operate terminals on a continu-

ous basis, twenty-four (24) hours a day, seven (7) days a week. These agencies have query-only access and are connected as Satellite Agencies to TBI through another agency's computer system.

5. Class Five consists of agencies that operate a large-scale computer system directly interfaced with the TBI. These agencies have been approved by TBI to have sufficient staff and resources to provide security, training, and related computer services to other network agencies.
  6. Class Six shall consist of consolidated and computer-assisted dispatch facilities, often referred to as 911 facilities. These may be governmental or non-governmental facilities that operate on a continuous basis, twenty-four (24) hours a day, seven (7) days a week.
  7. Class Seven shall consist of non-criminal justice agencies that perform criminal justice functions.
  8. Class Eight shall consist of non-criminal justice agencies accessing in-state records.
  9. Class Nine shall consist of NLETS ORI access.
- (4) User Agreements- All agencies accessing the TIES shall execute a User Agreement with the TBI. Any agency providing TIES access to a non-terminal agency shall execute the appropriate agreement with that agency. Any Class Three agency providing access to another agency shall execute a User Agreement, which will include all requirements set out in a TBI User Agreement and any additional provisions deemed necessary by that agency. All agreements between agencies shall be approved by TBI. Class Seven agencies shall execute the required security addendum as provided by the FBI.
  - (5) Audit- All agencies shall submit to FBI and TBI audit to ensure compliance with all FBI, NCIC, NLETS and TCIC rules. No TBI employee who is responsible for auditing local law enforcement agencies shall conduct an audit of an agency by which the employee was employed in the past in any capacity. This applies regardless of the length of service and/or the time since service with the prior employer.
  - (6) Access Cost- All directly connected terminal agencies will share in the costs incurred by TBI in the day-to-day operations of the TIES and associated communication network.
  - (7) Any terminal agency, upon approval by TBI, is authorized at its own expense to furnish a terminal to another agency for operation as a satellite upon execution of an agreement requiring servicing of said terminals and operation thereof to meet minimum NCIC, NLETS and TCIC standards without degradation of TIES.
  - (8) Any agency desiring to connect to the TIES shall make a request in writing to the TBI. Upon securing the approval of TBI, the agency shall execute and maintain an agreement. The agreement will require compliance with NCIC, NLETS, TCIC rules and regulations, operation to comply with all privacy laws, security of equipment, sharing of costs and performance of all things applicable to the appropriate class of agency required to make TIES an interactive system performing the duties and furnishing the benefits intended by Chapter 10 of Title 38 of T.C.A.
  - (9) Absent provisions set forth in state law, Tennessee criminal history records are not accessible to the general public except under the following conditions:
    - (a) To challenge an arrest that appears on a criminal history record check conducted for employment, license or firearms carry permit or purchase.
    - (b) To challenge a criminal history record the individual must:
      1. submit a written request to the TBI Records and Identification Unit;



2. provide satisfactory proof of identification including a photo ID;
  3. submit at least two (2) classifiable fingerprint cards for comparison; and
  4. pay a fee set by the Director as set forth in TCA 38-6-103(d)(1)(2).
- (10) Dissemination- Indirect dissemination of specific information received through the TIES shall be allowed unless there are specific state, local or federal laws precluding this dissemination. No agency authorized by statute to receive information from state CHRI shall use the information obtained there from for any purpose other than law enforcement purposes or as authorized by statute and is prohibited from disclosing, exposing or transmitting by any means information from TIES to any private citizen, corporation, entity or any other government agency not specifically authorized by statute to have such information.
- (11) Policy Violations- Any violations of policies governing the use and operation or information received from the TIES shall be reported immediately to the TBI.
- (12) Physical Security- Physical locations of all fixed agency terminals shall be approved by the TBI. The computer site and/or terminal area shall have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data. Prior approval shall be received from the TBI for additional devices to be connected to the TIES network.
- (13) System Security-All agencies shall demonstrate compliance with the current CJIS security policy published by the FBI. Class five agencies shall ensure and provide evidence to TBI that the system has ample hardware and software safeguards to limit TIES access to only authorized terminals and personnel of the satellite agency.
- (14) Qualifications -
- (a) Terminal operators who are public safety emergency dispatchers shall meet the qualifications in TCA § 7-86-201.
  - (b) Terminal operators who are not emergency dispatchers shall meet the following minimum qualifications.
    1. Be at least eighteen (18) years of age;
    2. Be a citizen of the United States;
    3. Be a high school graduate or possess equivalency;
    4. Have fingerprints on file with the TBI;
    5. Have no felony convictions; and
    6. Be of good moral character.
- (15) Certification - Certification requirements include, but are not limited to, the following:
- (a) All terminal operators must complete certification courses offered by TBI in order to operate the terminal equipment, or certification shall be issued upon successful completion of a training curriculum prescribed by the Information Systems division;
  - (b) All certified operators must be re-certified once every two (2) years by successfully completing all certification courses offered by TBI; and

- (c) Only certified operators will be allowed to operate a TIES terminal (an exception being an operator-trainee who has not completed the initial certification program, in which case a certified operator must be present when the equipment is being operated by the trainee).
- (16) Training -Terminal agencies will require that their terminal operators attend training sessions offered by TBI to ensure proper operation of terminal equipment. Class five agencies shall provide TBI approved training for and certification of the Class five agency operators and satellite terminal agency operators.
  - (17) Terminal Agency Coordinator- Each terminal agency shall appoint a Terminal Agency Coordinator to act as the liaison with TBI. The agency shall inform TBI of the Terminal Agency Coordinator assignment and any re-appointments that are made in said position. Re-appointments shall be made immediately upon the vacancy of a Coordinator's position. Any agency whose TAC or alternate TAC is convicted of a criminal offense while holding such position shall notify TBI of such conviction immediately.
  - (18) TIES- Terminal agencies are authorized to transmit, receive or exchange information directly relating to law enforcement, but shall not use the system for the transmission of general or personal messages. TIES terminal stations, which are used to make NCIC entries, shall be operated twenty-four (24) hours a day, seven (7) days a week. Terminal stations, both fixed and mobile, which are used for query-only, shall be secured when unattended.
  - (19) Criminal History Inquiries- All criminal history inquiries and disseminations shall be logged with a hardcopy showing information received and the requesting person's authority for making the request. The log shall be maintained for two (2) years from the date of transmission.
  - (20) Violations of Federal or State laws and NCIC, NLETS, and TCIC rules and regulations will result in the following disciplinary action:
    - (a) Willful violation of Federal law, T.C.A. § 39-3-Part 14 or § 40-32-101, will result in interruption of the interface of the terminal of the offending agency, and restoration will be made when the offending agency has furnished proof of appropriate action to correct the offense and assure future compliance;
    - (b) Willful violation of rules and regulations or other laws, including unauthorized access of files or unauthorized disclosure of data obtained for lawful purposes, will result in a required formal notification, within a specified time, of the violation with an explanation of the correction and conditions or circumstances which produced the violation(s);
    - (c) Any unauthorized acquisition and/or use of data relating to a specific person will require notification to the affected person by the offending agency or in lieu thereof, by TBI; and
    - (d) Continued violations of the same kind or frequent violations after warnings will result in cancellation of the user agreement and discontinuance of the TIES access to the agency.
  - (20) Equipment software will contain provisions for classification of data. All data transmitted over TIES is classified as follows:
    - (a) Class A shall include any data the disclosure of which to unauthorized persons, or agencies or entities would constitute a violation of the criminal laws;
    - (b) Class B shall include any data which is rendered confidential by a specific law or court decision;
    - (c) Class C shall include data which the judiciary has determined to be private as protected by the United States Constitution and related laws;

- (d) Class D shall include any data which may be restricted by court order incident to a judicial proceeding;
  - (e) Class E shall include all TBI case file information relating to specific crimes, criminal activity and persons;
  - (f) Class F shall include all other general data relating to crimes, criminals and criminal activities, which may be disclosed to the public.
- (21) All criminal history record information or any other information protected by a privacy law received from NCIC through TIES will carry a privacy classification designation contained within equipment software which will attach to all subsequent transmission of that data by any means. Also, if any data is received through the system by an agency, which is not classified but becomes classified because of any laws relating to that agency, then any subsequent dissemination of that information by that agency shall carry its privacy classification.
- (22) All agencies, which have been identified by NCIC and TCIC as being agencies authorized to handle data in relation to any of the programs and files maintained by NCIC and TCIC, shall be entitled to access the information in relation to those programs from both NCIC and TCIC files.

**Authority:** *T.C.A. §§38-10-101 and 38-6-102(e).*

**1395-1-1-. 07 AUTOMATED FINGERPRINT INFORMATION SYSTEM (AFIS).**

- (1) Fingerprints of persons arrested and submitted under existing state law shall be subject to the following regulations of the AFIS System:
- (a) Fingerprints shall be retained in the AFIS database until the person reaches the age prescribed for removal of the record under RDA 1686;
  - (b) Fingerprints may be submitted by mail or by any electronic means meeting NIST standards as defined in the TBI Electronic Fingerprint Submission Interface Specifications;
  - (c) Fingerprints not meeting the TBI quality control standards shall be rejected and returned to the contributor with a standardized rejection form attached describing the reason(s) for rejection;
  - (d) Fingerprints of juveniles will be retained only if they meet quality control standards and contain one of the following notations:
    - 1. Treat as Adult; or
    - 2. Juvenile Felony Arrest.Arrest histories generated from juvenile fingerprint receipts meeting the above criteria will be disseminated in the same manner as adult records;
  - (e) TBI will report statistics related to fingerprint submissions and rejections to the State Comptroller's office; and
  - (f) Records will be removed only on the receipt of a court ordered expungement, death notice, or receipt of official request on departmental letterhead from the head of the submitting agency.

- (2) Law Enforcement and Criminal Justice Agency Applicant Fingerprints shall be subject to the following regulations:
- (a) Candidates for sheriff will submit two (2) sets of fingerprints on form FD-258. The cards should bear the TBI's ORI. The "Reason Fingerprinted" block of the form shall bear the notation "Candidate for sheriff of (name of) county;" and
  - (b) Any CHR located as a result of fingerprint search of law enforcement, criminal justice agency applicants or employees, and candidates for sheriff will be reported to the contributing agency, with a copy forwarded to the POST commission. Any CHR located on sheriff's candidates will be reported to the District Attorney General or other contributing agency.
- (3) Regulatory and Other Non-Criminal Justice Agencies shall be subject to the following regulations:
- (a) Agencies which issue licenses or permits to any person, corporation, partnership, or other entity to engage in an authorized activity affecting the rights, property, or interests of the public or segments thereof, may submit fingerprints as required by enabling legislation for the limited purpose of determining if such license or permit should be issued; and
  - (b) Processing fees will be assessed and collected by the TBI in accordance with existing state law. Fees will be collectible in advance by cashier's check, certified check, money order, or by journal voucher to state agencies.

**Authority:** *T.C.A. §§ 37-10-207, 38-6-102(e) and 38-10-101.*

#### **1395-1-1-. 08 CERTIFICATION OF RECORDS.**

- (1) It is the purpose of these rules relating to certification to provide the certainty of the official authorization of records of the Bureau whenever official attestation, sealing, and certification of the TBI records, reports, documents, and actions are required by law, including orders of the courts, but not to create any greater or additional coverage of certification than authorized by law.
- (2) Every report of the Forensic Services Division rendered or administered in connection with any case in a criminal, juvenile, or municipal court, or when otherwise required by law, or dealing with alcohol or drug content of blood, breath or urine shall bear the following certification:

I certify and attest that this document is the proper record it purports to be.

---

Designated Representative of TBI Director

- (3) The following persons shall be responsible for the certification of any Forensic Services Division report prepared at a TBI facility under their supervision:
  - (a) TBI Assistant Director for Forensic Services; or
  - (b) Any Crime Laboratory Regional Supervisor.
- (4) The certification of criminal histories, when required by law, shall bear the certification in (2) above, and shall also contain the following certification:

I hereby attest that the above is a true and accurate xerographic representation of the fingerprints of:

\_\_\_\_\_ as maintained by the State Central Repository of Criminal History Records by the Records and Identification Unit of the Tennessee Bureau of Investigation. I further attest that I am the Supervisor of the Records and Identification Unit and Official Custodian of Records for the Tennessee Bureau of Investigation.

\_\_\_\_\_  
Signature of Custodian of Records

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Date

- (5) The attestation, scaling and certification of TBI records, reports, documents, and actions other than those listed above, including the authentication of identification of Bureau personnel with the public and internal documents of the Bureau, shall be executed by the Director or Deputy Director.
- (6) All certification shall contain the official Tennessee Bureau of Investigation Seal as follows:

When the seal is used, it may be affixed by being printed or impressed.

**Authority:** *T.C.A. § 38-6-107.*

The proposed rules set out herein were properly filed in the Department of State on the 16th day of November, 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 30th day of March, 2002. (11-24)

**TENNESSEE BUREAU OF INVESTIGATION - 1395**

**CHAPTER 1395-1-2**

**DIVISION OF TENNESSEE INCIDENT BASED REPORTING SYSTEM PROGRAM**

Presented herein are proposed rules of the Tennessee Bureau of Investigation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Professional Standards Unit of the Tennessee Bureau of Investigation to promulgate these rules without a rulemaking hearing, unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Bureau of Investigation Professional Standards Unit, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and the Department of State, Division of Publications, Suite 1700, James K. Polk Building, Nashville, Tennessee 37243-0310. The petition must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For complete copies of the entire text of the proposed rules, please contact David Jennings, Executive Assistant, Professional Standards Unit, Tennessee Bureau of Investigation, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and telephone (615) 744-4204.

The text of the proposed rules is as follows:

**PROPOSED RULES  
OF THE  
TENNESSEE BUREAU OF INVESTIGATION**

**CHAPTER 1395-1-2  
TENNESSEE INCIDENT BASED REPORTING SYSTEM PROGRAM**

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**1395-1-2-. 01 PURPOSE AND SCOPE.**

To establish guidelines for law enforcement reporting, certification and sanctions under the Tennessee Incident Based Reporting System Program.

*Authority:* T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38--10-104 and 38-10-105.

**1395-1-2-. 02 DEFINITIONS.**

- (1) Agency Certification - The certification received from the TBI CSU for compliance with the TIBRS program.
- (2) Alternate RAC - An Alternate Reporting Agency Coordinator with at least sixteen (16) hours of training annually on the TIBRS Program (if with a police department, sheriff's department or law enforcement college) or eight (8) hours (if with a state agency, drug task force, or non-law enforcement college) must be designated by each agency submitting data to the TBI CSU.
- (3) Central Repository - The computer program maintained by the TBI CSU that receives all of the information sent from law enforcement agencies and transmits that information to the FBI.
- (4) CLEO- Chief Law Enforcement Officer.
- (5) CSU - Crime Statistics Unit is the unit or section of the TBI responsible for maintaining the Central Repository for the collection of crime statistics from all law enforcement agencies.
- (6) Data Checks - An analysis completed by the TBI CSU that ensures data submissions do not contain errors before the records are processed through the Central Repository.
- (7) Entering Agency - A law enforcement agency that meets the certification requirements of the TIBRS Program and submits data to the TBI CSU on that agency's behalf.

- (8) Error Report - The report generated by the TBI CSU when data submissions do not pass data checks.
- (9) FBI-Federal Bureau of Investigation.
- (10) Grant Computer - The computer provided by the TBI to law enforcement agencies in compliance with the certification requirements of the TIBRS Program.
- (11) NCIC-National Crime Information Center is a database of criminal information maintained by the FBI.
- (12) Non-Compliance- Requirements for TBI CSU certification on the TIBRS Program have not been met or adequately maintained.
- (13) Non-Entering Agency Agreement - An agreement between two law enforcement agencies through which one agency elects to enter crime statistics for the other agency.
- (14) ORI Number - The Originating Agency Identifier is a nine-character identifier assigned by FBI NCIC to an agency which has met the established qualifying criteria for ORI assignment to identify the agency in transaction on the NCIC System.
- (15) Quality Assurance Review - An investigation performed by the TBI CSU to ensure compliance with the certification requirements of the TIBRS Program.
- (16) RAC - A Reporting Agency Coordinator with at least sixteen (16) hours of training annually on the TIBRS Program must (if with a police department, sheriff's department or law enforcement college) or eight (8) hours (if with a state agency, drug task force, or non-law enforcement college) must be designated by each agency submitting data to the TBI CSU.
- (17) Re-certification - A process by which an agency in non-compliance with the TIBRS Program certification requirements can receive another chance to receive certification from the TBI CSU.
- (18) TBI - Tennessee Bureau of Investigation.
- (19) TIBRS - Tennessee Incident Based Reporting System is the program of the TBI that maintains a system of intrastate communication of vital statistics and information relating to crime, criminals and criminal activity.
- (20) Training Database - A program maintained by the TBI CSU training staff that tracks training records of RAC and Alternate RAC staff members using the individual's social security number.
- (21) Vendor- A company that manufactures records management software that meets TIBRS reporting standards as found in the current TIBRS FILE layout specific document.

**Authority:** *T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38--10-104 and 38-10-105.*

### **1395-1-2-. 03 TIBRS PROGRAM CERTIFICATION REQUIREMENTS.**

- (1) The TBI CSU will be responsible for maintaining the Central Repository for the collection of crime statistics from all law enforcement agencies. The responsibilities of the TBI CSU include, but are not limited to, the following:
  - (a) Processing data submissions through the Central Repository;

- (b) Compiling and transmitting the data to the FBI monthly;
  - (c) Monitoring submissions from law enforcement agencies to ensure timely and accurate data submissions;
  - (d) Generating error reports to provide to law enforcement agencies that submit inaccurate data;
  - (e) Training RAC and Alternate RAC staff members from each law enforcement agency participating in the TIBRS Program; and
  - (f) Performing Quality Assurance Reviews of all participating law enforcement agencies to ensure compliance with the requirements of the TIBRS Program.
- (2) Each law enforcement agency that participates in the TIBRS Program shall be certified by the TBI CSU staff, upon meeting certification requirements.
- (3) Certification requirements for each agency shall include the following requirements:
- (a) Maintaining three consecutive months of data submission with an error rate of less than four (4%) percent when processed through the Central Repository;
  - (b) Designating a RAC, in writing by the CLEO, who is responsible for submitting data to the TIBRS Program who has the required amount of annual training on the Program;
  - (c) Maintaining a current Memorandum of Understanding with the TBI on file for each grant computer; and
  - (d) Appointing an Alternate RAC, in writing by the CLEO, who is responsible for submitting data to the TIBRS Program in the absence of the RAC who has the required amount of annual training on the Program.
- (4) Agencies that change software vendors are required to go through the certification process of submitting three consecutive months of data with an error rate of less than four (4%) percent with the new software and two calendar years of back data must be converted to the new system by the new vendor.

**Authority:** *T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38--10-104 and 38-10-105.*

**1395-1-2-. 04 DATA SUBMISSION PROCEDURES.**

- (1) Entering Agencies shall submit crime statistic information monthly to the TBI CSU staff.
- (2) Deadlines for data submissions are as follows:
  - (a) Information from the previous month is due to the TBI by the tenth (10<sup>th</sup>) day of the current month.
  - (b) Information concerning incidents occurring in the current month should be entered in that month when possible.
- (3) The Tennessee Wildlife Resources Agency shall report only felonies, Class A misdemeanors set forth in Title 69 and 70 of the Tennessee Code Annotated, and any other violations which may be encountered and which fall within the Agency's general police powers.



**Authority:** T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38-10-104 and 38-10-105.

**1395-1-2-. 05 ERROR REPORTS.**

- (1) The TBI CSU shall process data submissions and enter information into the Central Repository unless the incidents do not pass the data checks and generate errors.
- (2) The TBI CSU will forward error reports received from the FBI to each agency for correction of incidents.
- (3) The TBI CSU shall return error reports to the originating law enforcement agency in a timely manner.
- (4) Error reports shall contain the following information:
  - (a) Reason(s) the incident did not pass the data check query;
  - (b) Suggestions for correcting the error- only for agencies using TBI's software. Agencies using commercial vendors should contact their vendors for assistance in this area.
- (2) Errors shall be corrected as soon as the error reports are received by the law enforcement agency and corrected incidents re-transmitted no later than the second month after the error report is received; and
- (3) A letter will be sent by the TBI CSU to any agency's CLEO whose error rate for any month that is four (4.0%) percent or higher.

**Authority:** T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38-10-104 and 38-10-105.

**1395-1-2-. 06 NON-ENTERING AGENCY AGREEMENT REQUIREMENTS.**

- (1) Law enforcement agencies may elect to enter crime statistics for another agency to the TIBRS Program only if the following requirements are met:
  - (a) A written agreement must be signed by the heads of both law enforcement agencies;
  - (b) The original copy of the written agreement must be sent to the TBI CSU; and
  - (c) The entering agency must enter statistics for the non-entering agency using the non-entering agency's ORI Number at all times for proper identification purposes.
  - (d) The TBI Director and the supervisor of the CSU must also sign the Non-Entering Agency Agreement.

**Authority:** T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38-10-104 and 38-10-105.

**1395-1-2-. 07 SANCTIONS FOR NON-COMPLIANCE WITH THE TIBRS PROGRAM REQUIREMENTS.**

- (1) A law enforcement agency will be classified as non-compliant with the requirements of the TIBRS Program if any of the following incidents occur:

- (a) Failure to submit data to the TBI CSU for three (3) consecutive months in a format accepted by the repository;
  - (b) Failure to submit by the 10<sup>th</sup> of the following month for four (4) consecutive months;
  - (c) Failure to have a RAC receive sixteen (16) hours of TIBRS Program training annually;
  - (d) Failure to implement corrective actions outlined in a report of findings from a Quality Assurance Review performed by the TBI CSU staff within sixty (60) days of receipt of the report by the law enforcement agency;
  - (e) Failure to submit a written response to the TBI CSU detailing steps taken to implement suggested recommendations within sixty (60) days of receipt of the Quality Assurance Review report;
  - (f) Failure to correct errors identified in error reports sent back to the law enforcement agency within sixty (60) days of receipt of the report;
  - (g) Failure to appoint a RAC, in writing from the CLEO, within thirty (30) days of starting reporting to the TIBRS Program;
  - (h) Failure to appoint a new RAC, in writing from the CLEO, within thirty (30) days after the position has become vacant;
  - (i) Failure to have a current written agreement between an Entering and Non-entering agency on file at TBI;
  - (j) Failure to produce all records requested for Quality Assurance Reviews; or
  - (k) Failure to submit four (4) consecutive months of data with an error rate of less than four (4.0%) percent after the law enforcement agency has been certified.
- (2) Failure to correct any of the incidents listed in section (1) of this part within thirty (30) days after notification by the TBI CSU will result in the agency losing certification status.
  - (3) A law enforcement agency with a grant computer that remains in non-compliance with the requirements of the TIBRS Program for ninety (90) days shall return the grant computer to the TBI in its original condition.
  - (4) A law enforcement agency that has lost certification for the TIBRS Program may be re-certified after the agency corrects the area(s) of non-compliance including submission of all back data, and submits three (3) consecutive months of previously unsubmitted data with an error rate of less than four (4.0%) percent.
  - (5) Notification of non-compliance with the requirements of the TIBRS Program shall be submitted by the TBI CSU to the Office of Criminal Justice Programs.

**Authority:** *T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38--10-104 and 38-10-105.*

#### **1395-1-2-. 08 GENERAL STATISTICAL INFORMATION.**

- (1) Requests for crime statistics shall be made in writing to the supervisor of the TBI CSU.

- (2) The Director of the TBI shall adopt and promulgate rules and regulations prescribing the form, general content, time, and manner of submission of the following reports:
  - (a) Uniform Crime Report, composed of information received from all state, county and municipal law enforcement and correctional agencies as well as courts; and
  - (b) Crime on Campus Report, composed of information provided by campus officials from universities located within the state of Tennessee.
- (3) The Director shall designate a unit to correlate such reports to compile and submit to the governor and the general assembly in the form of an annual report.
- (4) A copy of the final report, submitted to the governor and general assembly, shall be furnished to law enforcement, prosecuting, judicial, correctional authorities, and other appropriate law enforcement and criminal justice agencies.

**Authority:** *T.C.A. §§ 38-10-101, 38-10-102, 38-10-103, 38—10-104 and 38-10-105.*

The proposed rules set out herein were properly filed in the Department of State on the 6th day of November, 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 30th day of March, 2002. (11-10)

## **TENNESSEE BUREAU OF INVESTIGATION - 1395**

### **CHAPTER 1395-1-3**

#### **DIVISION OF TENNESSEE INSTANT CHECK SYSTEM PROGRAM**

Presented herein are proposed rules of the Tennessee Bureau of Investigation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Professional Standards Unit of the Tennessee Bureau of Investigation to promulgate these rules without a rulemaking hearing, unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Bureau of Investigation Professional Standards Unit, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and the Department of State, Division of Publications, Suite 1700 James K. Polk Building, Nashville, Tennessee 37243-0310. The petition must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For complete copies of the entire text of the proposed rules, please contact David Jennings, Executive Assistant, Professional Standards Unit, Tennessee Bureau of Investigation, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and telephone (615) 744-4204.

## **PROPOSED RULES OF THE TENNESSEE BUREAU OF INVESTIGATION**

**CHAPTER 1395-1-3  
DIVISION OF TENNESSEE INSTANT CHECK SYSTEM PROGRAM**

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**1395-1-3-. 01 PURPOSE AND SCOPE.**

To establish guidelines for Federal Firearms Licensees for performing inquiries through the Tennessee Instant Check System Program related to the sale or redemption of firearms.

*Authority:* T.C.A. § 39-17-1316.

**1395-1-3-. 02 DEFINITIONS.**

- (1) Account Information Form - Required form completed by the FFL and returned to the TBI TICS Unit along with the Federal Firearms License of the FFL prior to any transactions related to the transfer of firearms.
- (2) Alien -Any person not a citizen or national of the United States.
- (3) BATF - Bureau of Alcohol Tobacco and Firearms.
- (4) Business Day - A twenty-four (24) hour period beginning at 12:01 a.m., exclusive of the day on which a transaction takes place.
- (5) CHRI - Criminal history record information.
- (6) Consignment - type auction - Auction held on a regular basis (e.g., every 1-2 months) at which auctioneer takes possession of firearms pursuant to a consignment contract giving him/her the exclusive right and authority to sell the firearms at a location, time and date to be selected by the auctioneer and providing for a commission to be paid upon sale.
- (7) Controlled Substance - Defined in the Controlled Substances Act (21 U.S.C. 802).
- (8) Denial Database - A hardcopy collection of TICS denials and any accompanying documentation relevant to the decision-making process.
- (9) Estate - type auction - Auction at which auctioneer assists estate in selling the estate's firearms, and the firearms are possessed and transferred by the estate.
- (10) FBI-Federal Bureau of Investigation.
- (11) Federal Firearms License - License issued to an FFL by the BATF according to the Gun Control Act of 1968 to qualify as a licensed firearm dealer.
- (12) Federal Form 4473 - Form provided by the BATF to record information regarding the purchase or transfer of

firearms.

- (13) FFL - Federal Firearms Licensee.
- (14) FFL Number - A six-segment number assigned to dealers by the BATF for identification and compliance purposes.
- (15) Firearm-A weapon as described in Tenn. Code Ann. § 39-11-106, including handguns, long guns, and all other weapons which meet the definition.
- (16) Firearms Dealer - Any person:
  - (a) Engaged in the business of selling firearms at wholesale or retail;
  - (b) Engaged in the business of repairing firearms or of making or fitting special barrels, stocks, trigger mechanisms to firearms; or
  - (c) Who is a pawnbroker and deals in firearms.
- (17) GCA-Gun Control Act of 1968, 18 U.S.C. § 44.
- (18) Gun Shows- Locations where FFL's may legally transfer merchandise to display and sell firearms to individuals, other than at their regular business premises.
- (19) Handgun Permit - A permit issued by the Department of Safety according to the provisions of T.C.A. 39-17-1351.
- (20) III- Interstate Identification Index is a resident database of name indices and CHRI maintained by the FBI on individuals for whom the FBI has a fingerprint supported arrest history.
- (21) Juveniles- For the purposes of the TICS Program, any person under twenty-one (21) years of age.
- (22) Licensed Dealer -Any dealer who is licensed under the provisions of the Gun Control Act of 1968; See also FFL.
- (23) NCIC-National Crime Information Center is a database of information maintained by the FBI on wanted persons, stolen weapons, orders of protection and other specific criminal information.
- (24) Pawnbroker-Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.
- (25) Pawnshop- The location at which, or premises in which, a pawnbroker regularly conducts business.
- (26) POS- Point of Sale devices that are capable of running TICS checks from various locations electronically.
- (27) Redemption-A firearm transfer that occurs at a pawn shop, which is controlled by the GCA.
- (28) Resident - An individual who resides in the state in which the purchase is being made for at least ninety (90) days prior to proposed purchase.
- (29) RIU- The Records and Identification Unit of the TBI.
- (30) Straw Purchase- A purchase or transfer of a firearm made by an individual who is not obtaining the firearm for himself/ herself or as a gift but rather for an individual who is disqualified from receiving or possessing a firearm.

- (31) TBI - Tennessee Bureau of Investigation.
- (32) The Brady Act-The commonly accepted name for 18 U.S.C.A. 922 that requires background checks on individuals attempting to purchase firearms, including individuals attempting to redeem pawned or pledged firearms.
- (33) Thumb Print Form-A form furnished to an FFL by the TBI TICS staff, upon request, on which the thumbprints of an individual purchasing or redeeming a firearm are kept.
- (34) TICS - Tennessee Instant Check System.
- (35) Transaction Number - The number given to the FFL by the TBI TICS staff to identify each individual firearm transaction.
- (36) Transfer- (of firearm) includes redemption from pawn as well as outright purchase.
- (37) Valid Appeal- A process in which a purchaser who is assigned a denied status after a TBI TICS check submits an appeal form, provided by the FFL, that is completely filled out and legible to the TBI TICS Unit requesting a review of the Instant Check decision.
- (38) Valid Identification- Identification that:
  - (a) Is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization. If the identification presented by the individual does not include a current address, the individual shall present a second piece of current identification that contains a current address; and
  - (b) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual; and
  - (c) Includes a photograph of the individual along with the name, address and date of birth, which is issued by a governmental entity for the purposes of identification of individuals.

**Authority:** *T.C.A. §§ 39-17-1303, 39-17-1316, 18 U.S.C. § 44, 18 U.S.C. § 921, 18 U.S.C.A. § 925A, 26 U.S.C.A. § 5801 et seq. and 21 U.S.C. § 802.*

### **1395-1-3-. 03 TICS PROGRAM IN GENERAL.**

- (1) The TICS Program is responsible for conducting background checks for proposed transfers of firearms in Tennessee, except for transfers excluded in § 39-17-1316.
- (2) The TBI TICS Program shall remain open seven (7) days a week from the hours of eight o'clock a.m. to ten o'clock p.m. Central Standard Time (8:00 a.m.- 10:00 p.m. (CST)) and only close for Independence Day (July 4th), Thanksgiving Day and Christmas Day.
- (3) The information obtained by the TBI TICS Unit shall be maintained in the following manner:
  - (a) TICS shall destroy all records pertaining to approved firearm transfers by the close of business on the day of the transaction except the transaction number and date the transaction occurred;

- (b) TICS may keep all information pertaining to denied firearm transfers including, but not limited to, any investigative materials obtained to confirm the criminal history of the recipient and enter the information into a Denial Database, which the FBI NICS Unit and BATF shall have access to, upon request.

*Authority:* T.C.A. §39-17-1316.

**1395-1-3-. 04 TICS PROGRAM INSTANT CHECKS REQUEST REQUIREMENTS.**

- (1) The primary owner/operator of a business shall establish an account with the TBI TICS Program prior to any check requests by meeting the following requirements:
  - (a) Completing the Account Information Form provided by the TBI TICS Unit; and
  - (b) Returning the completed Account Information Form to the TBI TICS Unit along with a copy of a valid Federal Firearms License; and
  - (c) Choosing a password to identify the business during any transaction and only allowing those employees with the authority to request TICS services access to the password.
- (2) The information on record with the TBI TICS Unit shall remain current and correct with any changes reported by repeating the application process outlined in section one (1).
- (3) Any request by an FFL for information shall be done by telephone, through an approved POS Unit, or any other method approved for access by the TBI, and the following information shall be provided to the TBI TICS operator:
  - (a) The federal firearms license number of the gun dealer, or the pertinent portion thereof as well as the FFL's self-assigned password;
  - (b) The business name of the gun dealer;
  - (c) The place of transfer, including the store location/ name or gun show location;
  - (d) The name of the salesperson making the transfer;
  - (e) The make, model, caliber and manufacturer's number of the firearm being transferred;
  - (f) The name, gender, race and date of birth of the recipient;
  - (g) The social security number of the recipient, if one has been provided; and
  - (h) The type, issuer and identification number of the identification presented by the recipient.
- (4) The TBI TICS operator shall give the FFL a transaction number for all approvals and denials, and the transaction will be assigned one of the following statuses:
  - (a) Approved (means transaction may be completed);
  - (b) Denied (means transaction is prohibited); or

- (c) Pending (means the TBI TICS Unit must investigate further before a final decision may be made, which shall occur within seventy-two (72) hours of the phone call). No transaction number will be provided to the FFL until the transaction is Approved or Denied.
- (5) The TBI TICS operator shall not give out any information other than the status of the transaction listed above. If the TBI TICS check reveals a record of stolen guns or wanted individuals in the NCIC system, then the TBI TICS operator shall immediately inform local law enforcement officials of such illegal activity and the location of the FFL.
- (6) The FFL shall record the transaction number from the TBI TICS operator on the firearm transaction record and transaction thumbprint form, which is furnished by the TBI TICS Unit upon request.
- (7) The TBI TICS operator may ask the FFL to send the thumbprint form to the TICS Unit in Nashville, Tennessee to verify the identity of the recipient.
- (8) The FFL shall keep the thumbprint form for one (1) year or may keep the form for five (5) years while attached to the BATF Form 4473, which the TBI strongly recommends.
- (9) A TICS check must be performed on persons redeeming firearms in pawnshops on each occasion. A TICS check may be performed on the person pawning the firearm prior to the FFL taking the firearm as collateral, but must be run again at the time the firearm is redeemed from pawn.
- (10) A fee of \$10.00 will be charged for each background inquiry initiated, regardless of the final approval or denial disposition. This fee will be charged to the FFL's account and the account will be billed on a monthly basis. THE FFL NUMBER MUST ACCOMPANY THE REMITTANCE in some form, preferably in the appropriate memo space. Only business checks, money orders, or cashiers checks, made payable to the Tennessee Bureau of Investigation will be accepted. Any account with an unpaid balance past due 60 days will be closed until payment has been received, precluding further TICS checks and therefore any further firearms transfers. All payments received will be applied to the oldest outstanding invoice first. Checks returned for any reason will be subject to a \$20.00 charge. The FFL number is used to identify the FFL's unique account number and ensure proper billing. All payments must be mailed to:
- (11) Each transaction is valid for three (3) business days, or seventy-two (72) hours, after close of business on the day of the approval of the transaction, and any recipient who does not take possession of the firearm during the valid time period must undergo a new transaction in which a new fee will be charged.
- (12) An FFL may choose not to perform a TICS check on transfers of firearms to law enforcement officers only if all other provisions of the law governing transfers has been met, and it is advisable for the FFL to ask the law enforcement officer to produce a letter from his/her agency head stating that the officer is currently employed by the department and remains in good standing. Further, the agency head must provide the FFL a letter stating the officer is purchasing the firearm for on-duty use or else the FFL must run a TICS check on the officer.
- (13) An FFL may choose to perform a TICS check to determine if a firearm has been reported stolen, prior to taking the firearm as pawn collateral, and the TBI shall not charge the FFL for that inquiry.

**Authority:** *T.C.A. §§ 39-17-1316, 28 C.F.R. § 25.6.*

#### **1395-1-3-. 05 DENIALS.**

- (1) The TBI TICS shall issue a Denial for reasons including, but not limited to, the following:



- (a) Addiction to alcohol;
  - (b) Felony conviction punishable by imprisonment for one (1) year or more;
  - (c) Under indictment for an offense punishable by imprisonment for one (1) year or more;
  - (d) Fugitive from justice, including a felony or misdemeanor;
  - (e) Addicted to or unlawful user of any controlled substance;
  - (f) An adjudicated mental defective or has been committed to a mental institution;
  - (g) An alien who is illegally or unlawfully in the United States;
  - (h) Dishonorably discharged from the United States Armed Forces;
  - (i) Has renounced his/her United States citizenship;
  - (j) Conviction in any court of a misdemeanor crime of domestic violence;
  - (k) Subject to a court order issued after a hearing, during which he/she received actual notice, and that restrains him/her from committing domestic violence;
  - (l) Persons who are legally in the United States, but under non-immigrant status;
  - (m) Persons who have not been residents of Tennessee for at least ninety (90) days continuously prior to the proposed purchase;
  - (n) Persons who misuse the TICS Program in any way or provide false information to purchase or transfer a firearm;
  - (o) Individual prohibited from obtaining a firearm under any state or federal law not listed; or
  - (p) Any other disabling reason resulting from new or amended state or federal law.
- (2) All convictions on arrest charges will be determined by the law of the jurisdiction in which the individual was convicted.
- (3) Juveniles may not legally purchase a handgun or handgun ammunition and persons under eighteen (18) years of age may not legally purchase a long gun or long gun ammunition.
- (4) The sale or transfer of a handgun to out-of-state residents by a Tennessee FFL is prohibited and the sale or transfer of a longgun to an out-of-state resident by a Tennessee FFL may be approved only under the following conditions:
- (a) The FFL shall request a TICS check; and
  - (b) The transfer is legal in both states involved.
- (5) An individual who performs or attempts a straw purchase or transfer is in violation of the law and will be reported to the BATF.
- (6) An individual who has received a denied decision may find out the basis for the denial in the following manner:

- (a) Request the appropriate appeal form and the transaction number from the FFL that handled the denied transaction; and
  - (b) Fill out the form and mail or fax it to the TBI TICS Unit within thirty (30) days.
- (7) The TBI TICS Unit must attempt to respond to any valid appeal in writing within five (5) business days and include the reason for denial and the proper procedure for challenging the denial.
- (8) An individual may appeal the decision of the TBI TICS Unit by sending the necessary documentation to support a challenge, including the final disposition of charges or expunction orders on official letterhead, bearing certification from the department head of that agency, to the TBI TICS Unit, and the following requirements apply to the appeals process:
- (a) The burden of proof is on the individual to prove that information is incorrect or that the charge in question was dismissed or that the conviction has been expunged, set aside or pardoned;
  - (b) If applicable, the burden of proof is on the individual to prove that his/her civil rights have been restored and that the restoration of rights does not prohibit possession of a firearm under federal or state law; and
  - (c) The appeal will only be successful if the individual is not otherwise prohibited for any reason by the law of Tennessee from receiving or possessing a firearm.
- (9) The TBI TICS staff shall review the completed appeal documentation, and if the appeal is successful, the staff shall change the denied status to approved. If the successful appeal concerns an entry in TCIC the TBI TICS staff shall provide the proffered documentation to the TBI RIU for correction of the record. If the successful appeal concerns an entry in III the TBI TICS staff shall forward the proffered documentation to the FBI for correction of the record.
- (10) When a TICS check reveals an arrest for a potentially disqualifying offense with no disposition the transaction will be denied. The purchaser may appeal the denial by following the procedure outlined in paragraphs 6-9 above.

**Authority:** *T.C.A. §§ 39-17-1303, 39-17-1316, 40-29-101, 18 U.S.C.A. § 925A, 26 U.S.C.A. § 5801 et seq. and 21 U.S.C. § 802.*

#### **1395-1-3-. 06 GUN SHOWS.**

- (1) An FFL shall only transfer firearms at gun shows in the same state as that which is specified on the Federal Firearms License of the FFL.
- (2) A Tennessee FFL may display firearms in another state but cannot fill any order for purchase in another state.
- (3) A Tennessee FFL must return the firearms to Tennessee and may deliver firearms to an FFL in the state in which a sale or transfer will take place.
- (4) No TICS checks shall be performed at Tennessee gun shows for an out-of-state FFL and any sales or transfers made without such a TICS check will constitute the crime of engaging in business from an unlicensed location for which violators will be punished according to Tennessee law and reported to the BATF.

**Authority:** *T.C.A. §§ 39-17-1316.*

#### **1395-1-3-. 07 AUCTIONS.**

- (1) Estate - type auctions do not require a federal firearms license.
- (2) Consignment - type auctions do require a federal firearms license.

**Authority:** *T.C.A. § 39-17-1316, 18 U.S.C. § 921(a), 18 U.S.C. § 922(a)(1), 18 U.S.C. 923(a) and ATF Rul. 96-2.*

The proposed rules set out herein were properly filed in the Department of State on the 11th day of November, 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 30th day of March, 2002. (11-11)

**TENNESSEE BUREAU OF INVESTIGATION - 1395**

**CHAPTER 1395-1-4**

**CRIMINAL INTELLIGENCE UNIT**

**AUTOMATED CRIMINAL INTELLIGENCE SYSTEM OF TENNESSEE PROGRAM**

Presented herein are proposed rules of the Tennessee Bureau of Investigation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Professional Standards Unit of the Tennessee Bureau of Investigation to promulgate these rules without a rulemaking hearing, unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Bureau of Investigation Professional Standards Unit, 901R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and the Department of State, Division of Publications, Suite 1700 James K. Polk Building, Nashville, Tennessee 37243-0310. The petition must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For complete copies of the entire text of the proposed rules, please contact David Jennings, Executive Assistant, Professional Standards Unit, Tennessee Bureau of Investigation, 901R.S. Gass Boulevard, Nashville, Tennessee 37216-2639, and telephone (615) 744-4204.

The text of the proposed rules is as follows:

**NEW RULES**

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1395-1-4-.01	Statement of Intent and Application	1395-1-4-.05	Information Retention
1395-1-4-.02	Definitions	1395-1-4-.06	Inquiry Procedure
1395-1-4-.03	Access Criteria	1395-1-4-.07	Inquiry Procedure
1395-1-4-.04	Dissemination of Information	1395-1-4-.08	Tennessee Missing Children Clearinghouse

**1395-1-4-. 01 STATEMENT OF INTENT AND APPLICATION.**

The Automated Criminal Intelligence System of Tennessee is a procedure by which the Tennessee Bureau of Investigation receives intelligence information from Criminal Justice Agencies within the State of Tennessee which are not members of the Regional Organized Crime Information Center (ROCIC), and submits that information to ROCIC for Storage and retrieval. This intelligence information will be conducted and submitted in accordance with the provisions of 28 Code of Federal Regulations (CFR) Part 23 as outlined in the Department of Justice, Office of Justice Programs, Guidelines G4600.1B, and subsequent modifications or revisions of these guidelines.

**1395-1-4-. 02 DEFINITIONS.**

- (1) ACIST-Automated Criminal Intelligence System of Tennessee
- (2) CFR-Code of Federal Regulations
- (3) CIU-Criminal Intelligence Unit of the TBI
- (3) MCOT- Missing Children of Tennessee
- (4) Missing Children - A missing child is defined as a child who is believed to have been removed by force, persuasion, trick, enticement, false pretense, has voluntarily left the custody of such child's parent without permission or is absent for unexplained or unknown reasons.
- (5) Multi-jurisdictional Records- Intelligence information involving more than one law enforcement jurisdiction.
- (6) NCIC-National Crime Information Center is a database of information maintained by the FBI on wanted persons, stolen weapons, orders of protection and other specific criminal information.
- (8) NCMEC-National Center for Missing and Exploited Children.
- (9) ROCIC-Regional Organized Crime Information Center
- (10) State Clearinghouse- State Repository of records for missing and exploited children.
- (11) Submissions-Information either written, printed, or recorded on computer disc regarding individuals or organizations whose criminal activity is extensive or whose impact meets the standards set forth in 28 C.F.R. 23.
- (12) TBI-Tennessee Bureau of Investigation

**Authority:** *T.C.A. §§38-6-102 and 28 C.F.R. § 23.*

**1395-1-4-. 03 Access Criteria.**

- (1) Information received through ACIST is submitted to ROCIC and is available only to authorized personnel of federal, state, and local law enforcement agencies.
- (2) Information received for submission must meet the standards as set forth by ROCIC and 28 CFR part 23.

**Authority:** *T.C.A. § 38-6-102 and 28 C.F.R. § 23.*

**1395-1-4-. 04 DISSEMINATION OF INFORMATION.**

- (1) Intelligence Information will be disseminated and assigned according to 28 C.F.R. § 23 and any guidelines as set forth by the Regional Organized Crime Information Center (ROCIC).
- (2) Dissemination of information will only be on a "right to know" and a "need to know" basis and is used for law

enforcement purposes only. “Need to know” and “right to know” shall have the meanings assigned to them by 28 C.F.R. § 23.

*Authority:* T.C.A. § 38-6-102 and 28 C.F.R. § 23.

#### **1395-1-4-. 05 INFORMATION RETENTION.**

- (1) All information received through ACIST will be designated as submissions to ROCIC.
- (2) Criminal history information shall not be retained with the original submission.
- (3) All information will be retained as set forth by rules and standards established by ROCIC.

*Authority:* T.C.A. § 38-6-102 and 28 C.F.R. § 23.

#### **1395-1-4-. 06 INQUIRY PROCEDURE.**

- (1) An inquiry shall be initiated, received, processed and disseminated as follows:
  - (a) Inquiries will be initiated, received, and processed only for state, federal, and local law enforcement agencies, and must involve reasonable suspicion of criminal activity;
  - (b) Inquiries concerning religious and/or political organizations, or matters of sexual content that do not involve specific criminal violations will not be processed;
  - (c) All requests for inquiries must be submitted in written form by mail or fax on departmental stationery, with agency contact and telephone number listed; and
  - (d) All inquiries must meet all standards and rules as set forth by the ROCIC.

*Authority:* T.C.A. § 38-6-102 and 28 C.F.R. § 23.

#### **1395-1-4-. 07 TENNESSEE MISSING CHILDREN CLEARINGHOUSE.**

- (1) The TBI has a signed memorandum of understanding with the National Center for Missing and Exploited Children (NCMEC) which establishes the TBI as the State Clearinghouse for Missing Children.
- (2) Whenever any law enforcement agency receives information from a custodial parent, legal guardian or any source it deems credible, it shall prepare a Missing Child Report in a manner specified by the TBI CIU standard operating procedures and transmit a copy thereof immediately to the TBI CIU.
- (3) The report shall include the following information about the missing child:
  - (a) Name;
  - (b) Date of birth;
  - (c) Sex;

- (d) Race;
  - (e) Height;
  - (f) Weight;
  - (g) Eye color;
  - (h) Hair color;
  - (i) Date of last known contact with the child;
  - (j) Location of last known contact with the child; and
  - (k) Category under which the child is report missing.
- (4) The TBI CIU shall collect the data submitted, pursuant to (a) above, and disseminate the same by computer, mail or other reliable communication to any law enforcement agency, the FBI, or any other state.
- (5) The law enforcement agency shall, immediately upon notification of a missing child, enter the child into NCIC, pursuant to Title 37, Public Law 101-647 (The National Child Search Assistance Act of 1990). The law enforcement agency shall simultaneously enter the missing child into the MCOT File.
- (6) The TBI CIU may display photographs of missing children via the Tennessee Internet Crime Information Center on the State of Tennessee's World Wide Web site.
- (7) The TBI will publish monthly a Missing Children Bulletin which shall be available to federal, state, and local law enforcement agencies, as well as the public. Nothing in this section will prohibit republication of this bulletin.

**Authority:** *T.C.A. §§ 38-6-116, 38-6-117 and Pub. L. 101-647.*

The proposed rules set out herein were properly filed in the Department of State on the 6th day of November, 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 30th day of March, 2002. (11-12)

**TENNESSEE BUREAU OF INVESTIGATION - 1395**

**CHAPTER 1395-1-6  
PRODUCTION OF DOCUMENTS AND TESTIMONY**

Presented herein are proposed rules of the Tennessee Bureau of Investigation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Professional Standards Unit of the Tennessee Bureau of Investigation to promulgate these rules without a rulemaking hearing, unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Bureau of Investigation Professional Standards Unit, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216, and the Department of State, Division of Publications, Suite 1700 James K. Polk Building, Nashville, Tennessee 37243-0310. The petition must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For complete copies of the entire text of the proposed rules, please contact David Jennings, Executive Assistant, Professional Standards Unit, Tennessee Bureau of Investigation, 901 R.S. Gass Boulevard, Nashville, Tennessee 37216, and telephone (615) 744-4204.

The text of the proposed rules is as follows:

**NEW RULES**

**TABLE OF CONTENTS**

1395-1-6-.01	Definitions.	1395-1-6-.05	Regulatory Agencies
1395-1-6-.02	Purpose.	1395-1-6-.06	Expenses.
1395-1-6-.03	Scope.	1395-1-6-.07	Certification.
1395-1-6-.04	Civil Actions.		

**1395-1-6-. 01 DEFINITIONS.** The following definitions shall apply to the terms in this chapter:

- (1) Bureau - means the Tennessee Bureau of Investigation or TBI.
- (2) CID - means the Criminal Investigation Division.
- (3) Civil action - means any State or Federal civil judicial proceeding in a court of record, including any proceeding in which a State employee is a party in the employee’s official or individual capacity and any proceeding pursuant to 28 U.S.C. § 2254.
- (4) Investigative records - means anything contained in the investigative files of the bureau, which are confidential pursuant to Tenn.Code Ann. §10-7-504(a)(2).
- (5) Criminal action - means any State, Federal, or foreign criminal investigation or prosecution by a law enforcement agency, including any State post-conviction proceeding.
- (6) DID - means the Drug Investigation Division.
- (7) Director - means the director of the bureau.
- (8) FSD - means the Forensic Services Division.
- (9) General counsel - means the chief in-house attorney for the bureau.

- (10) Law enforcement agency - means any State, Federal, or foreign governmental agency having statutory power of arrest whose primary function is that of detection, apprehension, and institution of prosecutions and which allocates more than fifty percent (50%) of its budget to the administration of criminal justice. Law enforcement agency also means the office of any State, Federal, or foreign prosecutor and the Tennessee Attorney General, but not a State, Federal, or foreign public defender.
- (11) Legal process - means any State or Federal subpoena or order in a civil action.
- (12) Legal counsel - means the general counsel or any other lawyer employed as an attorney by the bureau or an attorney with the Office of the Attorney General of Tennessee.
- (13) Official information - means any documents, material or information acquired or created by the bureau as a part of its official duties or acquired by an employee because of the employee's official status. This term also includes the testimony of an employee on a matter within the scope of the employee's official duties, or testimony based on knowledge acquired by an employee by virtue of that employee's official status. Official information includes, but is not limited to, "confidential information."
- (14) Request to inspect - means a request to inspect public records pursuant to the Tennessee Public Records Act, Tenn.Code Ann. §10-7-503.
- (15) State - means the State of Tennessee.

**Authority:** *T.C. A. §4-4-103, §38-6-101, and §10-7-504(a)(2); United States ex. rel Touhy vs Ragen, 340 U.S. 462, 71 S. Ct. 416, 95 L. Ed. 417 (1951), Tenn.R.Civ.P. 26, 30, and 45; Fed.R.Civ.P. 26, 30, and 45.*

#### **1395-1-6-. 02 PURPOSE.**

- (1) Due to the inherently intrusive nature of criminal investigations and the sensitive nature of material contained in bureau records, access by the public to records of the bureau is extremely limited and subject to several considerations. The bureau has promulgated this chapter to provide guidance and information to persons who may seek access.
- (2) Pursuant to the Tennessee Public Records Act, Tenn.Code Ann. §10-7-504(a)(2), investigative records of the bureau "shall be treated as confidential and shall not be open to inspection by members of the public." Access to investigative records may be gained only in compliance with process from a court of record, including either a subpoena or a court order. Access to investigative records may not be gained under this statute by using process from an administrative tribunal, a general sessions court, a city court, or other court that is not of record. Accordingly, the director
  - (a) does not produce investigative records pursuant to a request to inspect or pursuant to subpoenas or orders from tribunals that are not courts of record, such as administrative tribunals, general sessions courts, and city courts;
  - (b) opposes any access to investigative records in the absence of a protective order limiting the use of those records, even if records are released pursuant a court of record's subpoena or order; and
  - (c) does not produce investigative records in response to any subpoena or order issuing from a tribunal with no in personam jurisdiction over bureau personnel.
- (3) In addition to the general confidentiality found in Tenn. Code Ann. §10-7-504(a)(2), bureau records are subject to specific restrictions on their release as "otherwise provided by state [and Federal] law." The director resists pro-



ducing material that is specifically confidential and privileged. For example, the bureau cannot release

- (a) National Crime Information Center records, pursuant to 28 C.F.R. §20.33;
  - (b) records obtained from the Federal Bureau of Investigation, pursuant to 5 U.S.C. §552(b) and 28 C.F.R. §16.96(g);
  - (c) Social Security Numbers, pursuant to 5 U.S.C. §552a Note, Disclosure of Social Security Numbers;
  - (d) information protected by the holding in *Kallstrom vs City of Columbus*, 136 F.3d 1055, 1066 (6th Cir. 1998);
  - (e) medical information protected by the holding in *Stenson vs City of Knoxville*, E.D.Tenn.No. 3-98-cv-142 (Memorandum and Order, R. 27, August 26, 1998);
  - (f) information protected by the informer's privilege, and
  - (g) information protected by the attorney work product doctrine, Tenn.R.Crim.P. 16.
- (4) Accordingly, this chapter is designed to:
- (a) Assist courts of record by establishing written procedures to govern the production of investigative records in response to legal process;
  - (b) Ensure timely and complete responses by the bureau to legal process;
  - (c) Protect against the release of privileged or confidential information as otherwise provided by State and Federal law; and
  - (d) Provide for review of legal process by legal counsel and by the Tennessee Attorney General to determine whether:
    - 1. the demand is procedurally and legally correct;
    - 2. the appropriate employee has been designated to supply the required documents or testimony; and
    - 3. any legal defense should be asserted against compliance with legal process.

**Authority:** *T.C.A. §4-4-103, §38-6-101, and §10-7-504(a)(2); United States ex. rel Touhy vs Ragen, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951), Tenn.R.Civ.P. 26, 30, and 45; Fed.R.Civ.P. 26, 30, and 45; Page vs Turncott, 179 Tenn. 491, 167 S.W.2d 350 (1943).*

### 1395-1-6-. 03 SCOPE.

- (1) This chapter applies to every civil action.
- (2) This chapter does not apply to any criminal action, with this exception:
  - (a) The bureau may resist legal process against which there is any ground for resistance, including that the legal process appears to be irregular in form, to be an attempt to subvert the normal discovery process, or to be an attempt to extend discovery beyond that provided by Tenn.R.Civ.P. 16 or its counterparts in

other jurisdictions, or to make bureau personnel or facilities available for use by defense counsel or defense experts.

- (b) This chapter does not create any right or benefit, substantive or procedural, enforceable against the bureau or the State.
- (c) This chapter does not restrict the ability of the bureau to cooperate in any way with another law enforcement agency.

**Authority:** *T.C.A.*. §4-4-103, §38-6-101, and §10-7-504(a)(2); *United States ex. rel Touhy vs Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951), *Tenn.R.Civ.P.* 26, 30, and 45; *Fed.R.Civ.P.* 26, 30, and 45.

#### 1395-1-6-. 04 CIVIL ACTIONS.

- (1) The bureau's records, employees, and property shall not be made available unless legal process conforms to the requirements of this rule.
- (2) Other than the general counsel, no bureau employee or former employee is authorized to accept service of legal process for any attempt to reach the bureau's records, employees, or property. The general counsel may be served in person or by facsimile transmission as follows:

General Counsel  
Tennessee Bureau of Investigation  
901 R.S. Gass Boulevard  
Nashville, TN 37216-2639

Voice: 615.744.4000  
Fax: 615.744.4500

- (3) The bureau shall have at least 20 days within which to comply.
- (4) The legal process must describe with reasonable particularity the matters upon which examination or document production is requested. Records are maintained by two different custodians, one for the FSD and another for the CID and DID.
- (5) In addition, the general counsel may require a written statement setting forth a summary of the testimony, documents, material or information sought and their relevance to the civil action. Any authorization for production or testimony may be limited to the scope of the written statement.
- (f) The general counsel may authorize the appropriate custodian to make production or may authorize the appropriate employee or former employee to give testimony. Due to resource limitations, an employee will not be authorized to testify for in excess of four hours plus travel time without the express consent of the general counsel. The deposition of designated custodians shall take place at the office of the custodian.
- (7) The bureau may object in whole or in part to the legal process by raising objections in accordance with the law. Foremost, investigative records are confidential and will not be released absent entry of a protective order limiting their use. The following additional objections are typically made:
  - (a) relevance;

- (b) privilege;
- (c) confidentiality; and
- (d) whether the bureau should be protected from “annoyance, embarrassment, oppression or undue burden or expense” or “unreasonable or oppressive” legal process.

**Authority:** *T.C.A.* §4-4-103, §38-6-101, and §10-7-504(a)(2); *United States ex. rel Touhy vs Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951), *Tenn.R.Civ.P.* 26, 30, and 45; *Fed.R.Civ.P.* 26, 30, and 45.

#### **1395-1-6-.05 REGULATORY AGENCIES.**

- (1) Unless otherwise provided by State or Federal law, upon written request by an authorized person of a State governmental agency, the general counsel may authorize disclosure to the requesting agency of criminal histories, records and data from bureau files, and the files of other states and Federal agencies for the limited purpose of determining whether a license or permit should be issued to any person engaged in an authorized activity affecting the rights, property or interests of the public.
- (2) Unless otherwise provided by State or Federal law, when an investigation by the bureau uncovers information pertinent to the status of a person holding or applying for a license from any governmental agency, the general counsel may authorize release of that information for use by the agency in its regulatory function.
- (3) At the discretion of the general counsel, a custody and receipt agreement may be required to limit use of confidential information.

**Authority:** *T.C.A.* §4-4-103, §38-6-101, and §10-7-504(a)(2); *United States ex. rel Touhy vs Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951), *Tenn.R.Civ.P.* 26, 30, and 45; *Fed.R.Civ.P.* 26, 30, and 45.

#### **1395-1-6-. 06 EXPENSES.**

- (1) At the discretion of the general counsel, the bureau may seek to recover costs for compliance with legal process, including an attorney’s fee for litigated matters.
- (2) Fees for compiling documents and materials, copying charges, and fees for expert and other testimony shall be charged at the level set in TBI Policy §7-2-004 (Fees for Production of Documents and Testimony).
  - (a) Unless otherwise authorized by statute or regulations, the fee charged shall be equal to the rated adopted by the United States Internal Revenue Service in the Internal Revenue Code, IRS Regulation § 301.7610-1(2)(i) & (ii). The charge shall be a per-copy fee and an hourly rate for all time spent collecting and reproducing the records.
  - (b) If there is not agreement on payment of costs, then the bureau may move the court for costs, including attorney’s fees for the time spent litigating the costs.
- (3) When bureau employees are subpoenaed as witnesses in civil cases as a result of work performed in their official capacities as employees of the State, the employee shall be considered on State business and the State shall be compensated for their time away from their primary duties. The employee must submit a memorandum to the appropriate supervisor itemizing expenses including the employee’s salaried hourly rate, plus benefits and mileage at the State mileage rate, plus lodging, meals and incidentals, per State rates for overnight travel, and attach a copy

of the subpoena to the memorandum. The name and address of the attorney shall be identified in the memorandum. Any remuneration relative to the serving of a subpoena or witness fee shall be forwarded to Fiscal Services for deposit in the General Fund for the State.

**Authority:** *T.C.A.* §4-4-103, §38-6-101, and §10-7-504(a)(2); *United States ex. rel Touhy vs Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed. 417 (1951), *Tenn.R.Civ.P.* 26, 30, and 45; *Fed.R.Civ.P.* 26, 30, and 45.

#### 1395-1-6-. 07 CERTIFICATION OF RECORDS.

- (1) Whenever official attestation, sealing, and certification of records, reports, documents, and actions are required by law, certification does not create any greater or additional certification than authorized by law.
- (2) Every report of the FSD rendered or administered in connection with any case in a criminal, juvenile, or municipal court, or when otherwise required by law, or dealing with alcohol or drug content of blood, breath or urine shall bear the following certification:

Certification:

I certify and attest that this document is the proper record it purports to be.

\_\_\_\_\_  
Designated Representative of TBI Director

- (3) The following persons shall be responsible for the certification of any FSD report prepared at a bureau facility under their supervision:
  - (a) the assistant director for forensic services; or
  - (b) any crime laboratory regional supervisor.
- (4) The certification of criminal histories, when required by law, shall bear the certification in (2) above, and shall also contain the following certification:

I hereby attest that the above is a true and accurate xerographic representation of the fingerprints of: \_\_\_\_\_ as maintained by the State Central Repository of Criminal History Records by the Records and Identification Unit of the Tennessee Bureau of Investigation. I further attest that I am the Supervisor of the Records and Identification Unit and Official Custodian of Records for the Tennessee Bureau of Investigation.

\_\_\_\_\_  
Signature of Custodian of Records                      Date  
Typed or Printed Name

- (5) The attestation, scaling and certification of records, reports, documents, and actions other than those listed above, including the authentication of identification of bureau personnel with the public and internal documents of the bureau, shall be executed by the director, deputy director, assistant director, information systems director, personnel director, or general counsel, as appropriate to the material certified.

- (6) All certification shall contain the official bureau seal as follows:

When the seal is used, it may be affixed by being printed or impressed.

**Authority:** *T.C.A.*, §4-4-103, §§38-6-101 and 107, and §10-7-504(a)(2); *United States ex. rel Touhy vs Ragen*, 340 U.S. 462, 71 S. Ct. 416, 95 L. Ed. 417 (1951), *Tenn.R.Civ.P.* 26, 30, and 45; *Fed.R.Civ.P.* 26, 30, and 45. *Administrative History:* Original chapter 1395-1-6 filed March 29, 2001; effective March 1, 2001.

The proposed rules set out herein were properly filed in the Department of State on the 6th day of November, 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 30th day of March, 2002. (11-13)

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## **PUBLIC NECESSITY RULES**

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

- 0620 - Department of Finance and Administration - Public necessity rules complying with or to implement the provisions of any federal waiver” permitted under the TennCare Medical Assistance Program, chapter 1200-13-12 Bureau of TennCare, 10 T.A.R. (October 2001) - Filed September 28, 2001; effective through March 12, 2002. (09-31)
  
- 1200 - Department of Health, Bureau of Health Services Administration, Division of General Environmental Health - Public necessity rules dealing with licensure of body piercing technicians, permitting and inspection of body piercing establishments, and regulating body piercing procedures, Chapter 1200-23-6 Body Piercing, 10 T.A.R. (October 2001) - Filed September 6, 2001; effective through February 18, 2002. (09-01)
  
- 1240 - Department of Human Services - Public Necessity Rules regarding standards of need for recipients of temporary assistance in the Families First program, chapter 1240-1-50 Standard of Need/Income, 8 T.A.R. (August 2001) - Filed July 3, 2001; effective through December 16, 2001. (07-01)
  
- 1240 - Department of Human Services - Public Necessity Rules relating to care standards relative to new age ranges for certain age groups of children being cared for in child care centers licensed by the Department of Human Services, chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School children, 8 T.A.R. (August 2001) - Filed July 19, 2001; effective through December 31, 2001. (07-15)
  
- 1240 - Department of Human Services - Public Necessity Rules re regarding standards relative to new age ranges for certain age groups of children being cared for in child care centers licensed by the Department of Human Services, chapter 1240-4-3 Licensure Rules for Child Care Centers Serving School-age children, 8 T.A.R. (August 2001) - Filed July 19, 2001; effective through December 31, 2001. (07-14)
  
- 1240 - Department of Human Services - Adult and Family services Division - Public Necessity Rules dealing with a mandatory report card and a voluntary rated licensing system for the purpose of evaluating, individually and collectively, all child care agencies licensed or approved by the Department , chapter 1240-4-7 Report Cards and Rated Licensing for Child Care Agencies, 9 T.A.R. (September 2001) - Filed August 4, 2001; effective through January 13, 2002. (08-02)
  
- 1255 - Real Estate Appraiser Commission - Public necessity rules dealing with compliance with the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), and the policies adopted thereunder, in the issuance of temporary practice permits to nonresident real estate appraisers, chapter 1255-6 Reciprocity, 9 T.A.R. (September 2001) - Filed August 30, 2001; effective through February 11, 2002. (08-48)

**DEPARTMENT OF HUMAN SERVICES - 1240  
CHILD SUPPORT DIVISION**

**CHAPTER 1240-2-3  
MISCELLANEOUS IV-D**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

The Department of Human Services was named a defendant in a class action lawsuit styled Sharon Harp, et al v. Natasha Metcalf, Commissioner, Department of Human Services, filed in the Davidson County Circuit Court.

This action included issues concerning the manner in which the Department has been collecting fees for the processing of child support payments since implementing the centralized collection process pursuant to T.C.A. §§ 8-21-403 and 36-5-116. The Court found that methodology permitted by State law was not in compliance with Federal law regarding accounting for, distributing and disbursing child support payments collected by the State on behalf of child support obligees. State law at T.C.A. § 36-5-116 permits the Department to reduce the amount of fee to be collected by the Department by rule of the Department. An order of the Court entered on October 23, 2001 requires the Department to cease collecting the funds in the previous manner permitted by the above-cited statutes as of November 1, 2001. This public necessity rule will place the Department in compliance with the Court's order by reducing the fee from five percent (5%) to zero percent (0%) effective on that date. The recent entry of this Order by the Court precludes the use of the normal rulemaking procedures to effect this reduction.

For a complete copy of these public necessity rules, contact Barbara Broersma, Assistant General Counsel, Tennessee Department of Human Services, 15<sup>th</sup> Floor, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006, (615) 313-4731.

Natasha K. Metcalf  
Commissioner  
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES  
OF  
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES  
CHILD SUPPORT DIVISION**

**CHAPTER 1240-2-3  
MISCELLANEOUS IV-D**

**NEW RULE**

Chapter 1240-2-3, Miscellaneous IV-D, is amended by adding the following new Section, so that, as amended, the new Section shall read:

**1240-2-3-.03 CHILD SUPPORT PROCESSING FEE**

- (1) Pursuant to T.C.A. §§ 8-21-403 and §§ 36-5-116, the Department of Human Services reduces the fee paid by the obligor for the collection and distribution of child support through the central collection system from five percent (5%) as set forth in T.C.A. §§ 8-21-403 and 36-5-116 to zero percent (0%).



- (2) This fee reduction and new fee amount shall become effective upon implementation of this Rule.
- (3) This Rule shall have no effect on the child support processing fee due to the court clerks that by law would otherwise continue to be paid by the obligor for the collection and distribution of child support through the court clerk.

**Authority:** *T.C.A. §§4-5-201 et seq. 4-5-209; 8-21-403; 36-5-116; 42 USC §§ 654b and 666.*

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of November, 2001, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 15th day of April, 2002.

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## **RULEMAKING HEARINGS**

### **TENNESSEE COMMISSION ON AGING AND DISABILITY - 0030**

The Tennessee Commission on Aging and Disability will hold a public hearing to receive comments concerning amended rules for state-funded Home and Community Based Services for Elderly and Disabled Adults. This hearing will be conducted as prescribed by Uniform Administrative Procedures Act T.C.A. §4-5-201 et. seq., and will take place in the Second Floor Conference Room, Middle Tennessee Regional Office, Tennessee Department of Health; 710 Hart Lane; Nashville, TN at 10:30 a.m. CST on January 22, 2002.

Written comments will be considered if received by close of business, January 22, 2002, at the office of the Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, 9th Floor, 500 Deaderick Street, Nashville, TN 37243-0860. Written comments may be transmitted in person, by U.S. Postal Service, a commercial courier, e-mail or facsimile. Any form of written comment must be identifiable by the sender's name and address, including zip code. Facsimile submissions will be accepted at 615-741-3309. Electronic mail submissions can be made to [tnaging@mail.state.tn.us](mailto:tnaging@mail.state.tn.us).

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Commission on Aging and Disability to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, facsimile, e-mail or other means, and should be made no less than ten days prior to January 22, 2002 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Commission on Aging and Disability, ADA Coordinator, Andrew Jackson State Office Building, 9th Floor, 500 Deaderick Street, Nashville, TN 37243-0860, 615-741-2056. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298) or call the Commission on Aging and Disability TDD number, 615-532-3893.

For complete copies of the text of the notice, please contact Nancy Brode, Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, 9th Floor, 500 Deaderick Street, Nashville, TN 37243-0860, telephone 615-741-2056, FAX 615-741-3309 or e-mail [tnaging@mail.state.tn.us](mailto:tnaging@mail.state.tn.us).

## **SUBSTANCE OF PROPOSED RULES**

### **CHAPTER 0030-2-1 STATE-FUNDED HOME AND COMMUNITY BASED SERVICES FOR ELDERLY AND DISABLED ADULTS**

#### **AMENDMENTS**

Rule 0030-2-1-.03 Intrastate Allocation Formula is amended by deleting paragraphs (1) and (2) from the existing rule which was effective July 16, 2001, and replacing with the following language, so that, as amended, the rule shall read as follows:

- (1) Each Area Agency on Aging and Disability shall receive a base award of \$50,000. The remainder of the funds will be equitably distributed between urban and rural areas. The formula for fund distribution will be according to each region's share of the state's population age 18 and over with self care limitations, using the best available data, provided that no planning and service area would receive less funding than received in Fiscal Year 2001, subject to the availability of appropriated funds.

- (2) The formula will be reviewed at least every three (3) years and updated when new information on the target population becomes available.

Rule 0030-2-1 is amended by adding the following new paragraph:

**0030-2-1-.04 MAXIMUM UNIT COST FOR SERVICES**

In each planning and service area, the contract average cost of a unit of service for home and community based long-term care services authorized by T.C.A. 71-5-1408 can not exceed one hundred-twenty percent (120 %) of the cost of that unit amount as approved by the Bureau of TennCare under a Section 1915(c) statewide waiver of the Medicaid State Plan for an identical service as described by the Waiver.

*Authority:* T.C.A. §§4-5-201, 71-2-105(b)(1), and 71-5-1408(d) and (e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-38)

**TENNESSEE STATE BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS - 0120**

There will be a hearing before the Tennessee State Board of Architectural and Engineering Examiners to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 62-2-203(c). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. (CST) on January 17, 2002.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5<sup>th</sup> Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this Notice of Rulemaking Hearing, contact the State Board of Architectural and Engineering Examiners, attention Barbara Bowling, Tennessee State Board of Architectural and Engineering Examiners, 500 James Robertson Parkway, 3<sup>rd</sup> Floor, Nashville, Tennessee 37243 at (615) 741-3221.

**SUBSTANCE OF PROPOSED RULES****CHAPTER 0120-1  
REGISTRATION REQUIREMENTS AND PROCEDURES****AMENDMENTS**

Rule 0120-1-.10 Education and Experience Requirements – Engineer is amended by deleting the text of paragraph (1)(b) and substituting instead the following language so that, as amended, paragraph (1)(b) shall read:

- (1) (b) Nonaccredited foreign engineering programs. An engineering curriculum of four (4) years or more which is a non-ABET accredited foreign program shall be referred by the applicant at the applicant's expense to the Engineering Credentials Evaluation International (ECEI) of the ABET for evaluation and recommendation. If, in the opinion of the ECEI, the curriculum for the degree at the time of the applicant's graduation is substantially equivalent to ABET accreditation requirements, the applicant shall submit his application in accordance with the requirements for applicants holding engineering degrees from institutions which do not have ABET accredited engineering programs in consideration of the factors outlined below.

**Authority:** T.C.A. §§62-2-203(c) and 62-2-401.

Rule 0120-1-.11 Education and Experience Requirements – Architect is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) For the purpose of evaluating the education and experience of applicants for examination and registration as an architect, the Board will utilize the "Table of Equivalents" contained in Appendix "A" to Circular of Information No. 1, published in July 1993 by the National Council of Architectural Registration Boards, except to the extent that such document conflicts with any applicable statute.
- (2) For the purpose of T.C.A. § 62-2-501(2), an approved "nonaccredited architectural curriculum" is an architectural curriculum of not less than four (4) years offered by a school of architecture as part of an architectural curriculum toward a National Architectural Accrediting Board (NAAB) accredited degree.
- (3) For the purpose of T.C.A. § 62-2-501(3), an approved "architecture-related curriculum" is an architectural engineering or architectural engineering technology curriculum accredited by the Accreditation Board for Engineering and Technology (ABET).
- (4) Effective December 1, 1984, an applicant for the required examination for registration as an architect shall have completed the Intern-Architect Development Program (IDP) of the NCARB.
- (5) An applicant for registration by comity shall submit proof acceptable to the board of having obtained the practical experience in architectural work required by T.C.A. §§62-2-501 and 62-2-503.

**Authority:** T.C.A. §§62-2-203(c), 62-2-501 and 62-2-503.

**CHAPTER 0120-2  
RULES OF PROFESSIONAL CONDUCT****AMENDMENTS**

Rule 0120-2-.02 Proper Conduct of Practice is amended by adding the following language after paragraph (3) as a new paragraph (4):

- (4) The registrant shall maintain the continuing education records required by rule 0120-5-.10 [Records] for a period of four (4) years and shall furnish such records to the Board for audit verification purposes within thirty (30) days of the Board's request.

**Authority:** T.C.A. §§62-2-203(c), (d) and 62-2-308.

## CHAPTER 0120-4 INTERIOR DESIGNERS

### AMENDMENTS

Rule 0120-4-.02 Applicability is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Unless otherwise indicated, the provisions of this Chapter shall apply to all applicants for registration as registered interior designers and all registered interior designers.

**Authority:** T.C.A. §62-2-203(c).

Rule 0120-4-.03 Applications is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Each application for registration as a registered interior designer must be at least twenty-one (21) years old and must not have been convicted of any offense that bears directly on the applicant's fitness to be registered as determined by the Board. The applicant shall indicate his or her age and shall give a full explanation of any conviction of any offense on a form provided by the Board.
- (2) An application for registration as a registered interior designer under the provisions of T.C.A. § 62-2-904 (registration requiring examination), shall be made on a form prescribed by the Board and shall be accompanied by a nonrefundable fee of fifty-five dollars (\$55.00). The applicant shall provide the Board with NCIDQ examination verification or equivalent examination verification by submitting the following to the examination sponsor:
  - (a) An examination verification form supplied by the Board; and
  - (b) The fee, if any, charged by the examination sponsor for verification.

**Authority:** T.C.A. §§62-2-203(c), 62-2-301(a), 62-2-904 and 62-2-905.

1. Rule 0120-4-.04 Education Requirements is amended by deleting the text of paragraph (1) and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) Except as provided by T.C.A. § 62-2-905 (registration without examination), the education requirements for an applicant for registration as a registered interior designer shall be those prescribed in T.C.A. § 62-2-904(a).

**Authority:** T.C.A. §§62-2-203(c) and 62-2-904(a).

Rule 0120-4-.05 Experience Requirements is amended by deleting the text of paragraph (1) and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) Except as provided by T.C.A. § 62-2-905, (registration without examination), the experience requirements for an applicant for registration as a registered interior designer shall be those prescribed in T.C.A. § 62-2-904 (registration with examination).

**Authority:** *T.C.A. §§62-2-203(c) and 62-2-904(a).*

Rule 0120-4-.08 Renewal of Registration is amended by deleting the text of paragraphs (1) and (2) and substituting instead the following language so that, as amended, paragraphs (1) and (2) shall read:

- (1) All certificates of registration issued to a registered interior designer are subject to biennial renewal (every two (2) years) in accordance with the provisions of T.C.A. § 56-1-302(b).
- (2) The fee for biennial renewal of certificates of registration for registered interior designers shall be in the amount of one hundred forty dollars (\$140.00).

**Authority:** *T.C.A. §§56-1-302(b), 62-2-203(c), 62-2-301(a) and 62-2-307(a).*

Rule 0120-4-.09 Registration Without Examination is amended by deleting the text of paragraph (1) and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) The education and experience requirements for an applicant for registration as a registered interior designer without examination shall be those prescribed in T.C.A. § 62-2-905.

**Authority:** *T.C.A. §§62-2-203(c) and 62-2-905.*

Rule 0120-4-.10 Professional Conduct is amended by deleting the text of paragraph (1) and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) The registrant shall comply with all applicable laws, regulations and codes governing the practice of interior design, and the use of the title “registered interior designer.”

**Authority:** *T.C.A. §62-2-203(c).*

## CHAPTER 0120-5 CONTINUING EDUCATION

### AMENDMENTS

Rule 0120-5-.10 Records is amended by deleting the text of paragraph (3) and substituting instead the following language so that, as amended, paragraph (3) shall read:

- (3) Records must be maintained for a period of four (4) years, and copies must be furnished to the Board for audit verification purposes within thirty (30) days of the Board’s request.

**Authority:** *T.C.A. § 62-2-203(d).*

Rule 0120-5-.10 Records is further amended by adding the following language after paragraph (3) as a new paragraph (4):

- (4) Any registrant who fails to comply with the requirements of this rule may be deemed by the Board to have violated rule 0120-2-.02 [Proper Conduct of Practice].

**Authority:** *T.C.A. §§62-2-203(c), (d) and 62-2-308.*

Rule 0120-5-.12 Noncompliance is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Unless a request for inactive or retired status is made, any registrant failing to furnish the required certification during the renewal period, properly completed and signed, shall not be granted renewal of registration by the Board.
- (2) Certificates of registration shall be subject to late renewal for six (6) months following their expiration date by payment of the renewal fee, plus a late penalty as set by the Board, along with a properly completed and signed renewal form indicating that all continuing education requirements for the renewal period have been completed. The applicant for late renewal of certification may not offer to engage in the practice of or engage in the practice of architecture, engineering or landscape architecture, or use the title “registered interior designer”, until all late renewal requirements have been met.
- (3) Any person wishing to renew a certificate later than six (6) months after its expiration shall reapply for registration.

**Authority:** *T.C.A. §§62-2-203(d) and 62-2-307.*

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of November, 2001.(11-36)

**BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS,  
AND CLINICAL PASTORAL THERAPISTS- 0450**

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 1st day of May, 2002.

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 0450-1-.01, Definitions, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Approved Supervisor - PC - An approved supervisor for professional experience subsequent to the master's degree is defined as a currently Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider designation, licensed marital and family therapist, licensed clinical social worker, licensed psychologist with health service provider designation, licensed senior psychological examiner, or licensed psychiatrist, who has been licensed or certified at least five (5) years and who takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, and Public Chapter 334 of the Public Acts of 2001.

Rule 0450-1-.05, Procedures for Licensure, is amended by deleting part (5) (b) 1. in its entirety and substituting instead the following language, so that as amended, the new part (5) (b) 1. shall read:

- (5) (b) 1. A qualified supervisor is defined as one who is a Licensed Professional Counselor with Mental Health Service Provider designation, licensed marital and family therapist, licensed clinical social worker, licensed psychiatrist, licensed senior psychological examiner, or a licensed psychologist with health service provider designation, who has been licensed or certified at least five (5) years and who is in good standing with their respective licensing boards and professional associations.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-121, and Public Chapter 334 of the Public Acts of 2001.

Rule 0450-1-.10, Supervision, Post-Masters, is amended by deleting paragraph (1) and subparagraph (5) (d) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) the new paragraph (5) (d) shall read:

- (1) Professional Counselor's Supervision. Supervision required by this rule shall be a professional experience which is supervised by a currently Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider designation, licensed marital and family therapist, licensed clinical social worker, licensed psychologist with health service provider designation, licensed senior psychological examiner, or licensed psychiatrist, pursuant to rule 0450—1—.01, who has been licensed or certified at least five (5) years and who is providing ongoing, direct clinical review for the purpose of training or teaching and who monitors the performance of a person's supervised interaction with a client and provides regular, documented, face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.
- (5) (d) Supervisors for applicants pursuing designation as mental health service provider, may be currently Licensed Professional Counselors with Mental Health Service Provider designation, licensed marital and family therapists, licensed clinical social workers, licensed psychiatrists, licensed senior psychological examiners, or licensed psychologists with health service provider designation, who has been licensed or certified at least five (5) years and who are in good standing with their respective licensing boards and professional associations.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, and Public Chapter 334 of the Public Acts of 2001.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of November, 2001. (11-16)

**BOARD OF ELECTROLYSIS EXAMINERS - 0540**

There will be a hearing before the Tennessee Board of Electrolysis Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-26-108. 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 28<sup>th</sup> day of March, 2002.

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 0540-1-.01, Definitions, is amended by deleting paragraph (1) in its entirety, and renumbering the remaining paragraphs accordingly.

*Authority:* T.C.A. §§4-5-202, 4-5-204, and 63-26-108.

Rule 0540-1-.06, Fees, is amended by deleting subparagraph (1) (h), paragraph (3) and subparagraph (4) (f) in their entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (h), paragraph (3), and subparagraph (4) (f) shall read:

- (1) (h) Reinstatement fee - A non-refundable fee to be paid each time an individual requests to reinstate an expired license.
- (3) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Electrolysis Examiners.
- (4) (f) Reinstatement Fee \$ 100.00 \$ 100.00

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-1-.06, Fees, is amended by deleting subparagraphs (1) (d) and (4) (d) in their entirety, and renumbering the remaining subparagraphs accordingly.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-1-.09, Renewal of License, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (e), and is further amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (4), so that as amended, the new subparagraphs (1) (b) and (1) (e), and the new paragraphs (2), (3), and (4) shall read:

- (1) (b) Methods of Renewal
  - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:  
  
www.tennesseeanytime.org
  - 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (1) (e) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Licensees whose licenses have expired as a result of the licensee's failure to renew pursuant to rule 1200-10-1-.10 may be reinstated upon meeting the conditions as provided in paragraph (3).
- (3) Reinstatement of an Expired License - Reinstatement of a license that has expired as a result of failure to timely renew in accordance with rule 1200-10-1-.10 may be accomplished upon meeting the following conditions:
  - (a) Payment of all past due renewal and state regulatory fees; and
  - (b) Payment of the reinstatement fee provided in Rule 0540-1-.06; and
  - (c) Submission of proof of compliance with continuing education requirements as provided in Rule 0540-1-.12.
- (4) Renewal and reinstatement decisions pursuant to this rule may be made administratively or upon review by any Board member or the Board's designee.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-1-.11, Retirement and Reactivation of License, is amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (b) shall read:

- (3) (b) Pay the current license renewal fees and State regulatory fee as provided in Rule 0540-1-.06. If reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Board will require payment of the reinstatement fee and all past due renewal fees as prescribed in Rule 0540-1-.06.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-1-.12, Continuing Education, is amended by deleting paragraphs (5), (6), and (7) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (5), (6), and (7) shall read:

- (5) Continuing Education for Reactivation of Retired License
  - (a) An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reactivation. Those hours will be considered replacement hours and can not be counted during the next renewal period.
  - (b) Along with the reactivation request, any electrologist who applies for reactivation of a license which has been retired for over five (5) years must verify by signature on a form provided by the Board or submit proof of attendance and completion of ten (10) hours of Board approved electrology-related continuing education. The electrologist who has retired his license may receive credit for courses taken during the time the license was in a retired status provided that at least five (5) hours were within one (1) year preceding application for reactivation.
  - (c) Continuing education hours obtained as a prerequisite for license reactivation may not be counted toward the continuing education hours required to be obtained before the end of the calendar year of reactivation.
- (6) Continuing Education for Reinstatement of Expired License
  - (a) A person whose license has expired may not be reinstated without complying with these requirements.
  - (b) Continuing education requirements will accumulate at the same rate as for a license which is active.
  - (c) An electrologist who applies for reinstatement of his expired license may receive credit for courses taken during the time the license was expired provided that at least five (5) hours were within twelve (12) months preceding application for reinstatement.
  - (d) Continuing education hours obtained as a prerequisite for license reinstatement may not be counted toward the continuing education hours required to be obtained before the end of the calendar year of reinstatement.
- (7) Violations - Any licensee who fails to successfully complete or who falsely certifies attendance and completion of the required hours of continuing education may be subject to disciplinary action.
  - (a) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
  - (b) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
  - (c) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (7) (b) above may be subject to disciplinary action.
  - (d) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-1-.15, Disciplinary Actions and Civil Penalties, is amended by deleting subparagraph (1) (e) but not all its parts in its entirety, and is further amended by deleting part (1) (e) 1. in its entirety, and is further amended by renumbering part (1) (e) 2. as subparagraph (1) (e).

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 63-26-108.

Rule 0540-3-.01, Definitions, is amended by deleting paragraph (1) in its entirety, and renumbering the remaining paragraphs accordingly.

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 63-26-108.

Rule 0540-3-.09, Renewal of License, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (e), and is further amended by deleting subparagraph (1) (f) in its entirety, and is further amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (3), so that as amended, the new subparagraphs (1) (b) and (1) (e), and the new paragraphs (2) and (3) shall read:

- (1) (b) Methods of Renewal
  - 1. Internet Renewals - Schools may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:  
  
www.tennesseeanytime.org
  - 2. Paper Renewals - For schools who have not renewed their license online via the Internet, a renewal application form will be mailed to each school licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the school from the responsibility of meeting all requirements for renewal.
- (1) (e) Schools who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of an Expired License - Reinstatement of a license that has expired as a result of failure to timely renew in accordance with rule 1200-10-1-.10 may be accomplished upon meeting the following conditions:
  - (a) Payment of all past due renewal and state regulatory fees; and
  - (b) Payment of the late renewal fee provided in Rule 0540-3-.06.
- (3) Renewal and reinstatement decisions pursuant to this rule may be made administratively or upon review by any Board member or the Board's designee.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-3-.15, Disciplinary Actions and Civil Penalties, is amended by deleting subparagraph (1) (e) but not all its parts in its entirety, and is further amended by deleting part (1) (e) 1. in its entirety, and is further amended by renumbering part (1) (e) 2. as subparagraph (1) (e).

**Authority:** T.C.A. §§4-5-202, 4-5-204, and 63-26-108.

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of November, 2001. (11-08)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. 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 Sequoyah Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CST) on the 16<sup>th</sup> day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities 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 Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 1200-8-6-.06, Basic Services, is amended by adding the following language as new subparagraph (4) (cc):

- (4) (cc) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:
1. The deceased was a resident of a nursing home;
  2. The death was anticipated, and the attending physician or nursing home medical director has agreed in writing to sign the death certificate. Such agreement by the attending physician or nursing home medical director must be present with the deceased at the place of death;
  3. The nurse is licensed by the state; and,
  4. The nurse is employed by the nursing home in which the deceased resided.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206 and 68-11-209.

Rule 1200-8-26-.06, Basic Agency Functions, is amended by adding the following language as new subparagraph (5) (d):

- (5) (d) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:
1. The deceased was receiving the services of a licensed home care organization;

2. The death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;
3. The nurse is licensed by the state; and
4. The nurse is employed by the home care organization providing services to the deceased.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206 and 68-11-209.*

Rule 1200-8-27-.06, Basic Agency Functions, is amended by adding the following language as new part (1) (a) 4.:

- (1) (a) 4. A registered nurse may make the actual determination and pronouncement of death under the following circumstances:
  - (i) The deceased was receiving the services of a licensed home care organization providing hospice services;
  - (ii) Death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;
  - (iii) The nurse is licensed by the state; and,
  - (iv) The nurse is employed by the home care organization providing hospice services to the deceased.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-39)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. 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 Sequoyah Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CST) on the 15<sup>th</sup> day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities 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 Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 1200-8-17-.06, Basic Services, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Nursing Services.
  - (a) If the facility's services include medication administration, the facility shall have a written agreement with a registered nurse to supervise medication administration and to provide nursing services as needed.
  - (b) Nursing services shall supervise the administration of medication.
    - 1. The facility shall consider the clients' ability and training when supervising the administration of medication.
    - 2. The facility shall ensure that prescription medications are taken only by clients for whom they are prescribed and in accordance with the direction of a physician.
    - 3. The facility shall ensure that medications are stored in a locked container which ensures proper conditions of security, sanitation and prevents accessibility to any unauthorized person.
    - 4. The facility shall dispose of discontinued and/or outdated medications and containers with worn, illegible, or missing labels.
    - 5. All medication errors, drug reactions, or suspected over-medications shall be reported to the practitioner who prescribed the drug.



6. Documentation of the current prescription of each medication taken by a client shall be maintained by the facility.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206 and 68-11-209.

Rule 1200-8-18-.06, Basic Services, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Nursing Services.
  - (a) If the facility's services include medication administration, the facility shall have a written agreement with a registered nurse to supervise medication administration and to provide nursing services as needed.
  - (b) Nursing services shall supervise the administration of medication, if provided.
    1. The facility shall consider the client's ability and training when supervising the administration of medication.
    2. The facility shall ensure that prescription medications are taken only by clients for whom they are prescribed and in accordance with the direction of a physician.
    3. The facility shall ensure that medications are stored in a locked container which ensures proper conditions of security, sanitation and prevents accessibility to any unauthorized person.
    4. The facility shall dispose of discontinued and/or outdated medications and containers with worn, illegible, or missing labels.
    5. All medication errors, drug reactions, or suspected over-medications shall be reported to the practitioner who prescribed the drug.
    6. Documentation of the current prescription of each medication taken by a client shall be maintained by the facility.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206 and 68-11-209.

Rule 1200-8-19-.08, Life Safety, is amended by deleting paragraph (16) in its entirety and substituting instead the following language, so that as amended, the new paragraph (16) shall read:

- (16) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206 and 68-11-209.

Rule 1200-8-20-.08, Life Safety, is amended by deleting paragraph (15) in its entirety and substituting instead the following language, so that as amended, the new paragraph (15) shall read:

- (15) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209.

Rule 1200-8-22-.06, Basic Services, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Nursing Services.
  - (a) If the facility's services include medication administration, the facility shall have a written agreement with a registered nurse to supervise medication administration and to provide nursing services as needed.
  - (b) Nursing services shall supervise the administration of medication.
    - 1. The facility shall consider the client's ability and training when supervising the administration of medication.
    - 2. The facility shall ensure that prescription medication are taken only by clients for whom they are prescribed and in accordance with the direction of a physician.
    - 3. The facility shall ensure that medications are stored in a locked container which ensures proper conditions of security, sanitation and prevents accessibility to any unauthorized person.
    - 4. The facility shall dispose of discontinued and/or outdated medications and containers with worn, illegible, or missing labels.
    - 5. All medication errors, drug reactions, or suspected over-medications shall be reported to the practitioner who prescribed the drug.
    - 6. Documentation of the current prescription of each medication taken by a client shall be maintained by the facility.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209.

Rule 1200-8-22-.08, Life Safety, is amended by deleting paragraph (16) in its entirety and substituting instead the following language, so that as amended, the new paragraph (16) shall read:

- (15) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Resident rooms shall be furnished with a UL approved trash container.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-41)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. 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 Sequoyah Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CST) on the 16<sup>th</sup> day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities 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 Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 1200-8-25-.01, Definitions, is amended by deleting paragraphs (6) and (7) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (6) and (7) shall read:

- (6) Assisted-Care Living Facility (ACLF). A building, establishment, complex or distinct part thereof which accepts primarily aged persons for domiciliary care and provides on site to its residents room, board, non-medical living assistance services appropriate to the residents' respective needs, and medical services as prescribed by each resident's treating physician, limited to the extent not covered by a physician's order to a home care organization and not actually provided by a home care organization. An ACLF may directly provide such medical services as medication procedures and administration that are typically self-administered, limited to oral medications, topicals, suppositories and injections (excluding intravenous) pursuant to a physician's order, and emergency response. All other skilled nursing services (part-time or intermittent nursing care, physical, occupational and speech therapy, medical social services, medical supplies other than drugs and biologicals, and durable medical equipment) that a home care organization is licensed to provide may be provided in the facility only by a licensed home care organization, except for home health aide services, or by the appropriate licensed staff of a nursing home if the assisted care living facility is located on the same physical campus as the licensed nursing home, in which case the assisted care living facility shall provide the individual with written notice that such services may be available to the individual as a Medicare benefit through a licensed home care organization.
- (7) Assisted-Care Living Facility Resident. Primarily an aged ambulatory person who requires domiciliary care and who may require non-medical living assistance services, medical services such as medication procedures and administration of medications that are typically self-administered, emergency response services, and home care organization services as prescribed by a physician's order and as allowed by law. Except as permitted in these rules, section 1200-8-25-.05, a person shall not be admitted or continue to reside in an ACLF if the person is in the latter stages of Alzheimer's disease or related disorders, requires physical or chemical restraints, poses a serious threat to himself

or herself or others, or requires nasopharyngeal and tracheotomy suctioning, initial phases of a regimen involving administration of medical gases, a nasogastric tube, or arterial blood gas monitoring, is unable to communicate his or her needs, requires intravenous or daily intramuscular injections or intravenous feedings, insertion, sterile irrigation and replacement of catheters (except for routine maintenance of Foley catheters), sterile wound care, or treatment of extensive stage 3 or 4 decubitus ulcer or exfoliative dermatitis.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.*

Rule 1200-8-25-.05, Admissions, Discharges, and Transfers, is amended by deleting paragraphs (2) through (10) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (11) and (12), so that as amended, the new paragraphs (2) through (12) shall read:

- (2) Except as provided in 1200-8-25-.05(3) and 1200-8-25-.05(4), an assisted care living facility shall not admit nor permit the continued stay of any assisted-care living facility resident if any of the following conditions exists. The person:
  - (a) Is in the latter stage of Alzheimer's disease or related disorders;
  - (b) Requires physical or chemical restraints;
  - (c) Poses a serious threat to himself or herself or others;
  - (d) Requires nasopharyngeal and tracheotomy aspiration;
  - (e) Requires initial phases of a regimen involving administration of medical gases;
  - (f) Requires a Levin (or nasogastric) tube;
  - (g) Requires arterial blood gas monitoring;
  - (h) Is unable to communicate his or her needs;
  - (i) Requires gastronomy feedings;
  - (j) Requires intravenous or daily intramuscular injections or intravenous feeding;
  - (k) Requires insertion, sterile irrigation and replacement of catheters, except for routine maintenance of Foley catheters;
  - (l) Requires sterile wound care; or,
  - (m) Requires treatment of extensive stage 3 or stage 4 decubitus ulcer or exfoliative dermatitis.
  
- (2) So long as (1) a person does not otherwise fall outside the definition of an assisted care living facility resident, and (2) the person's medical condition and overall health status are stable, and (3) the person is able to care for their condition without the assistance of facility personnel or home health care, and (4) the person has a documented history of self-care for their medical condition for at least one (1) year, which is documented by the patient's treating physician and made part of their medical record, then any assisted-care living facility may accept for admission and allow the continued stay of such person who:
  - (a) has in place a gastrostomy tube or percutaneous endoscopic gastrostomy tube;

- (b) requires a nasopharyngeal suctioning or has a tracheostomy tube;
  - (c) has in place a catheter that is their sole physical means of elimination of waste; or
  - (d) requires the routine administration of oxygen.
- (2) If any person admitted to an assisted care living facility under this subsection no longer meets the requirements listed above and/or is no longer able to self care for their medical condition, the assisted care living facility must transfer the person immediately to a licensed nursing home or hospital. Nothing in this subsection shall be construed to prevent facility staff from responding to an emergency situation.
- (3) A resident of an ACLF with any of the conditions listed in (a), (b), or (c) of this section may be retained by the ACLF for a period not to exceed twenty-one (21) days. A resident may continue as a resident in the facility for an additional twenty-one (21) day period if, within the first twenty-one (21) days (or by the first business day thereafter, if the twenty-first day falls on a weekend or holiday), or earlier if same becomes apparent to the facility, the extension of the initial twenty-one day period is approved by the commissioner of health, or the commissioner's designee, so long as the individual approving the extension is a physician licensed in Tennessee. The Department must respond to a request for an extension of stay within five (5) working days of its receipt of an extension request.
- (a) The person requires intravenous or daily intramuscular injections or intravenous feedings;
  - (b) The person requires insertion, sterile irrigation and replacement of catheters, except for routine maintenance of Foley catheters; or
  - (c) The person requires sterile wound care.
- (4) Notification to the Department for twenty-one day extensions shall be:
- (a) Made in writing and transmitted by mail or fax within two (2) business days;
  - (b) Include a detailed summary of the resident's condition.
- (5) Under no circumstances shall a person be eligible to continue as an assisted care living facility resident if after the twenty-one (21) day period the resident requires four (4) or more skilled nursing visits per week for conditions other than those listed in paragraph (5) of this rule.
- (6) The ACLF must:
- (a) Be able to identify at the time of admission and during continued stay those residents whose needs for services are consistent with these rules and regulations, and those residents who should be transferred to a higher level of care.
  - (b) Have a written admission agreement that includes a procedure for handling the transfer or discharge of residents and that does not violate the residents' rights under the law or these rules.
  - (c) Have an accurate written statement regarding fees and services which will be provided upon admission.
  - (d) Give a thirty (30) day notice to all residents before any changes in fee schedules can be made.
  - (e) Ensure that residents see a physician for acute illness or injury and are transferred in accordance with any physician's orders.

- (f) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccine, unless such vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within 10 days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

- (g) Provide to the resident at the time of admission a copy of the Resident's Rights for the resident's review and signature. A signed copy must be provided to the resident at the time of admission.
  - (h) Have written policies and procedures to assist residents in the proper development, filing, modification and rescission of an advanced directive, a living will, a do-not-resuscitate order, and the appointment of a durable power of attorney for health care.
- (9) Resident who cannot evacuate within thirteen (13) minutes may be retained in the facility so long as such residents are retained in designated areas in accordance with Chapter 12 of the 1997 edition of the NFPA Life Safety Code and Institutional Unrestrained Occupancy of the Standard Building Code.
  - (10) Persons in all but the latter stages of Alzheimer's Disease and Related Disorders may be admitted only after it has been determined by an interdisciplinary team consisting of, at a minimum, a physician experienced in the treatment of Alzheimer's Disease and Related Disorders, a social worker, a registered nurse, and a family member (or patient care advocate) that care can appropriately and safely be given in the facility. The interdisciplinary team must review such persons at least quarterly as to the appropriateness of placement in the facility.
  - (11) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.
  - (12) Facilities utilizing secured units must be able to annually provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents:
    - (a) Documentation that each secured resident has been evaluated by an interdisciplinary team consisting of at least a physician, a social worker, a registered nurse, and a family member (or patient care advocate) prior to admittance to the unit;
    - (b) Ongoing and up-to-date documentation of quarterly review by each resident's interdisciplinary team as to the appropriateness of placement in the secured unit;
    - (c) A current listing of the number of deaths and hospitalizations, with diagnoses, that have occurred on the unit;
    - (d) A current listing of all unusual incidents and/or complications on the unit;

- (e) An up-to-date staffing pattern and staff ratios for the unit that is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week, at all times;
- (f) A formulated calendar of daily group activities scheduled, including a resident attendance record for the previous three (3) months;
- (g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and
- (h) Documentation showing that 100% of the staff working on the unit receives and has received annual in-service training which shall include, but not be limited to, the following subject areas:
  - 1. Basic facts about the causes, progression and management of Alzheimer's Disease and related disorders;
  - 2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;
  - 3. Identifying and alleviating safety risks to the resident;
  - 4. Providing assistance in the activities of daily living for the resident; and
  - 5. Communicating with families and other persons interested in the resident.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209 and 68-11-216.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-40)

### **TENNESSEE STATE BOARD OF EXAMINERS FOR LAND SURVEYORS - 0820**

There will be a hearing before the Tennessee State Board of Examiners for Land Surveyors to consider the promulgation of amendments to rules pursuant to Tenn. Code Ann. § 62-18-125(b). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 212 of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 9:30 A.M. (CST) on the 17<sup>th</sup> day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Department's ADA Coordinator at 500 James Robertson Parkway, 5<sup>th</sup> Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Donna Moulder, Administrator, Tennessee State Board of Examiners For Land Surveyors, 500 James Robertson Parkway, 2<sup>nd</sup> Floor, Davy Crockett Tower, Nashville, Tennessee 37243 at (615) 741-3611.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 0820-1  
RULES OF TENNESSEE STATE BOARD OF EXAMINERS FOR LAND SURVEYORS**

**AMENDMENTS**

Rule 0820-1-.05 Fees is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read as follows:

Fees. The following schedule of fees is hereby established:

Application Fee .....	\$200.00
Friday Examination – Principles and Practices of Land Surveying (PLS) .....	\$150.00
Tennessee Land Surveying (TLS) .....	\$150.00
Saturday Examination – Fundamentals of Land Surveying (FLS) .....	\$125.00
Professional Land Surveyor in Training (PLSIT) Examination (Application Fee) .....	\$25.00
Certificate of Registration .....	\$100.00
Biennial Renewal .....	\$280.00
Late Renewal Penalty (per month or fraction thereof) .....	\$ 20.00

**Authority:** *T.C.A. §§62-18-105(d), 62-18-109, 62-18-113, 62-18-114 and 62-18-125.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-47)



## MASSAGE LICENSURE BOARD - 0870

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-18-211. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 10<sup>th</sup> day of April, 2002.

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 0870-1-.04, Licensure and Provisional Licensure Process, is amended by deleting parts (2) (a) 1., (2) (d) 1., (2) (d) 2., and subparagraph (2) (e) in their entirety and substituting instead the following language, so that as amended, the new parts (2) (a) 1., (2) (d) 1., (2) (d) 2., and the new subparagraph (2) (e) shall read:

- (2) (a) 1. Complied with all subparagraphs, except (f) and (o), of paragraph 0870-1-.01 (1);
- (2) (d) 1. Have the documentation required by part 0870-1-.04 (1) (f) 2. provided to the Board Administrative Office; and
- (2) (d) 2. Submit the fees required by subparagraph 0870-1-.04 (1) (j) to the Board Administrative Office;
- (2) (e) If a holder of a provisional license fails the examination, the applicant for licensure may be granted a second provisional license to practice massage therapy when the applicant again compiles with subparagraph 0870-1-.04 (2) (a). A second provisional license will be issued and shall expire without further action by the board six (6) weeks after the date on which the examination will be given for the applicant.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-18-204, 63-18-205, and 63-18-211.

Rule 0870-1-.06, Fees, is amended by deleting subparagraphs (2) (a), (2) (b), (2) (c), and (2) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a), (2) (b), (2) (c), and (2) (d) shall read:

- (2) (a) Individual Application Fee - Which includes:
  - 1. Application Fee \$ 25.00

2.	Initial Licensure Fee	\$ 75.00
3.	State Regulatory Fee	<u>\$ 10.00</u>
	Total application fee due at the time of application.	\$110.00
(2) (b)	Establishment Application Fee - Which includes:	
1.	Application Fee	\$ 25.00
2.	Initial Licensure Fee	\$ 50.00
3.	State Regulatory Fee	<u>\$ 10.00</u>
	Total application fee due at the time of application.	\$ 85.00
(2) (c)	Individual Biennial Licensure Renewal Fee	\$100.00
(2) (d)	Establishment Biennial Licensure Renewal Fee	\$ 50.00

**Authority:** T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, and 63-18-211.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of November, 2001. (11-06)

### BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-7-20, 63-7-209, 63-6-210, 63-6-211, 63-6-224, 63-24-102, and 63-24-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground Floor of the Cordell Hull Building located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee at 2:30 p.m. (CST) on the 18th day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at the Division of Health Related Boards, 1st Floor Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULES**

**AMENDMENTS**

Rule 0880-2-.02 Fees, is amended by deleting subparagraphs (1) (a), (1) (f), and (1) (h) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (1) (f), and (1) (h) shall read:

- (1) (a) Application Fee - a non refundable fee to be paid by all licensure applicants regardless of the type of license applied for. It must be paid each time an application for licensure is filed. \$400.00
- (1) (f) Licensure Renewal Fee - To be paid biennially by all licensees. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license. \$225.00
- (1) (h) Late Licensure Renewal Fee - To be paid when a licensee fails to timely renew licensure. \$200.00

*Authority: T.C.A. §§ T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-7-20, 63-7-209, 63-6-210, and 63-6-211.*

Rule 0880-4-.05 Licensure Process, is amended by deleting subparagraph (3) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (d) shall read:

- (3) (d) Pay the fee required by Rule 0880-4-.06.

*Authority: T.C.A. §§ T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-24-102, and 63-24-106.*

Rule 0880-4-.06 Fees, is amended by deleting paragraphs (1), (2) (3), (4), (5), (6), (7), and (8) in their entirety and substituting instead the following language as new paragraphs (1), (2) (3), (4), (5), (6), and (7), so that as amended, the new paragraphs (1), (2) (3), (4), (5), (6), and (7) shall read:

- (1) Licensure application-examination fee to be submitted at the time of application \$150.00
- (2) Biennial renewal fee to be submitted at the time of application \$120.00
- (3) Late renewal fee \$100.00
- (4) Licensure restoration fee \$ 50.00
- (5) Duplication of license fee \$ 5.00
- (6) Biennial state regulatory fee to be submitted at the time of application \$ 10.00
- (7) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must drawn against an account in a United States Bank, and made payable to the Tennessee Board of Medical Examiners.

**Authority:** T.C.A. §§ T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-24-102, and 63-24-106.

Rule 0880-4-.08 Examinations, is amended by deleting subparagraph (3) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (c) shall read:

- (3) (c) An examinee who fails this examination may subsequently retake it upon submitting payment of the licensure application-examination fee, as provided in rule 0880-4-.06.

**Authority:** T.C.A. §§ T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-24-102, and 63-24-106.

Rule 0880-5-.02 Fees is amended by deleting the introductory language in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), (3), and (4) in their entirety and substituting instead the following language, so that as amended, the new introductory language, and the new paragraphs (1), (2), (3), and (4) shall read:

**0880-5-.02 FEES.** The following fees are nonrefundable and apply to all applicants and certificate holders. All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must draw against an account in a United States Bank, and made payable to the Tennessee Board of Medical Examiners.

- (1) Application and Certification Fee - To be paid by all applicants at the time an application is filed. \$100.00
- (2) Biennial Certification Renewal Fee - To be paid by all persons holding certification. \$ 50.00
- (3) State Regulatory Fee - To be paid upon application and annually thereafter to be collected at biennial renewal from all certificate holders. \$ 5.00  
(\$10.00 biennially)
- (4) Late Renewal - Reinstatement Fee \$ 50.00

**Authority:** T.C.A. §§ T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, and 63-6-224.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-42)

**BOARD OF MEDICAL EXAMINERS - 0880**

There will be a hearing before the Board of Medical Examiners to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 53-11-301, 63-6-101, and 63-6-214. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground Floor of the Cordell Hull Building located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee at 2:30 p.m. (CST) on the 18th day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at the Division of Health Related Boards, 1st Floor Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

**SUBSTANCE OF PROPOSED RULE****AMENDMENT**

Rule 0880-2-.14 Specifically Regulated Areas and Aspects of Medical Practice, is amended by deleting the period at the end of part (7) (b) 4. and substituting instead the punctuation and word “; or” and is further amended by adding the following new language as part 5. of subparagraph (7) (b), and is further amended by adding the following new paragraph (9), so that as amended, the new parts and paragraph shall read as follows:

- (7) (b) 4. For established patients who, based on sound medical practices, the physician feels does not require a new physical examination before issuing new prescriptions; or
- (7) (b) 5. In compliance with paragraph (9) of this rule.
- (9) Treatment of Chlamydia trachomatis
  - (a) Purpose – This rule provides an acceptable deviation from the normal standard of care in the treatment of Chlamydia trachomatis (hereafter Ct) and provides a means for physicians to help reduce Tennessee's rate of Ct infection which currently exceeds the national rate by over ten percent (10%), and which, if left untreated, can cause serious health problems including pelvic inflammatory disease, ectopic pregnancies, infertility, cervical cancer and an increased risk of HIV infection. This rule will allow physicians and those over whom they exercise responsibility and control to provide an effective and safe treatment to the partners of patients infected with Ct who for various reasons either may not otherwise receive appropriate treatment.
  - (b) For purpose of this rule “partner(s)” shall mean any person who comes into sexual contact with the infected patient during the sixty (60) days prior to the onset of patient's symptoms or positive diagnostic test results.
  - (c) Prerequisites – Physicians and those who provide medical services under their responsibility and control who have first documented all of the following in the medical records for patients may provide partner treatment pursuant to subparagraph (d) of this rule:

1. A laboratory-confirmed Ct infection without evidence of co-infection with gonorrhea or other complications suggestive of a relationship to Ct infection; and
  2. Provision of treatment of the patient for Ct; and
  3. An attempt to persuade the infected patient to have all partners evaluated and treated and the patient indicated that partners would not comply; and
  4. Provision of a copy of reproducible, department-provided Ct educational fact sheet or substantially similar Ct-related literature available from other professional sources to the patient with copies for all partners; and
  5. Counseling the patient on sexual abstinence until seven (7) days after treatment and until seven (7) days after partners have been treated; and
- (d) Partner Treatment - Upon documentation in the patient's medical records of all prerequisites in subparagraph (c) physicians or those who provide medical services under their responsibility and control may either:
1. Provide to the treated patient blank signed prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin (Zithromax) sufficient to provide curative treatment for the total number of unnamed "partners" as defined in subparagraph (b) and indicated by the patient.
  2. Provide to the treated patient signed, name-specific prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin (Zithromax) sufficient to provide curative treatment for the total number of known partners as defined in subparagraph (b) and named by the patient.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of November, 2001. (11-34)

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

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of new rules pursuant to Tenn. Code Ann., Sections 33-33-1-302 and 305. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code. Ann., Section 4-5-204, and will take place in the First Floor Hearing Room, Andrew Johnson Tower, 725 James Robertson Parkway, Nashville, Tennessee, at 10:00 a.m. central time on the 17<sup>th</sup> day of January, 2002.

Written comments will be considered if received by close of business, January 11, 2002, at the DMHDD Office of Legal Counsel, Twenty-Sixth Floor, W. R. Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243.

Individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Tennessee Department of Mental Health and Developmental Disabilities, to discuss any auxiliary aids or services needed to facilitate such participation or review. 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 scheduled meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Mental Health and Developmental Disabilities ADA Coordinator, Dr. Lindsey Douglass, Sixth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243. Dr. Douglass' telephone number is (615) 741-7440; the department's TDD is (615) 532-6612. Copies of the notice are available from the Tennessee Department of Mental Health and Developmental Disabilities in alternative format upon request.

For a copy of the notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Twenty-sixth Floor, W. R. Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6520

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 0940-5-4  
LIFE SAFETY LICENSURE RULES**

Chapter 0940-5-4 is amended by adding section 0940-5-4-.11. The section shall read:

**0940-5-4-.11 RESIDENTIAL OCCUPANCIES** - one- and two-family dwellings (two or three residents who are unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility without physical assistance, in three (3) minutes or less).

- (1) Definition: One-and two-family dwellings include buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders who are unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility without physical assistance, in three (3) minutes or less. Examples of facilities required to meet one-and two-family dwelling occupancy with residents unable to evacuate without physical assistance, in three (3) minutes or less are the following:
  - (a) Mental Retardation Residential Habilitation Facility
  - (b) Mental Health Supportive Living Facility
  - (c) Mental Health Residential Treatment Facility

- (2) Criteria: For the purpose of Life Safety, facilities accommodating residents unable to evacuate without physical assistance, in three (3) minutes or less and are required to meet one-and two-family dwelling occupancies must comply with the following:
- (a) Applicable standards of the Life Safety Code of the National Fire Protection Association, or equivalent standards hereafter adopted by the Office of the State Fire Marshal
  - (b) The following additional standards:
    - 1. A specific staff person must be assigned to each individual, prior to admission, who is unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility, without physical assistance, in three (3) minutes or less. Individuals who use a wheelchair for evacuation purposes need not be assigned a specific staff person to assist them as long as they are able to transfer from a fixed position to the wheelchair without physical assistance, and evacuate the facility in three (3) minutes or less.
    - 2. Evacuation procedures shall be sufficient so that it is not necessary for a staff person to re-enter the building after once leaving.
    - 3. A risk assessment must be completed for each individual admitted to the facility within five (5) calendar day of admission to the facility on a form prepared by the Department.
    - 4. If the risk assessment indicates that the individual is able to evacuate without physical assistance within three (3) minutes or less, then it is not necessary to assign a specific staff person to assist the individual in evacuating.
    - 5. If the risk assessment indicates that the individual is not able to evacuate without physical assistance within three (3) minutes or less, then a specific staff person must be assigned to assist the individual in evacuating. Such staff assignment is required at all times that the individual is inside the facility.
    - 6. The risk assessment must be repeated when the individual's circumstances change.
    - 7. Staff assigned to individuals needing assistance must be trained in evacuation procedures specific to the individual being assisted.
    - 8. Individuals who cannot evacuate without physical assistance must receive training needed to improve his ability to evacuate the facility more independently.
    - 9. Provide at least two hundred (200) square feet, gross, of occupiable space per resident,
    - 10. Provide at least:
      - (i) eighty(80) square feet per resident bedroom space for single occupancy, or
      - (ii) sixty (60) square feet per resident bedroom space for multiple occupancy,
    - 11. Maintain proper storage and safeguards for all flammable materials,
    - 12. Not use unvented gas heaters or portable electric heaters,



13. Use extension cords only on a limited basis and under the conditions acceptable to the Office of Licensure of the Department; and
14. Provide a smoke detector in each bedroom occupied by the resident, in the living rooms, and in other such rooms or areas as the Office of Licensure may require. Smoke detectors must receive their operating power from the electrical system.
15. Provide operable, type 2A-10B, C, multipurpose fire extinguishers in a fixed location and readily accessible for use in the facility, and document that all fire extinguishers are properly maintained and serviced.
16. Identify areas where smoking is permitted; smoking in bedrooms must not be allowed.
17. Not allow persons unable to evacuate without assistance above or below the ground floor.
18. Document fire-safety drills which must be conducted:
  - (i) monthly at unexpected times and under varying conditions, and ensuring each shift holds one (1) per quarter;
  - (ii) under direct staff supervision,

*Authority:* T.C.A. §§4-4-103, 4-5-202, 4-5-204, and 33-1-302 and 305

This notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of November, 2001. (11-31)

### **BOARD OF OPTOMETRY - 1045**

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to rules pursuant to T.C.A. §§4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 1<sup>st</sup> day of March, 2002.

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

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

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

## SUBSTANCE OF PROPOSED RULES

### AMENDMENTS

Rule 1045-2-.01, Fees is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) Application Fee - This fee is non-refundable and shall be paid each time an application for licensure is filed. \$200.00

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-115.*

Rule 1045-2-.03, Examinations, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Applicants graduating prior to January 1, 1992 - Unless applicants choose to qualify pursuant to paragraph (2), all such applicants must, in addition to having successfully completed all parts of the pre-1992 National Board of Examiners in Optometry (NBEO)'s examinations, unless waived, and the Association of Regulatory Boards of Optometry or its predecessor organization's examination, successfully complete the Board's clinical examination which is Part III of the NBEO's examination
- (a) The Board adopts as its written licensure examinations those administered by the National Board of Examiners in Optometry and the Association of Regulatory Boards of Optometry or its predecessor organization as they existed through December 31, 1991 for all applicants graduating prior to January 1, 1992.
- (b) The fees to take the examinations administered by the National Board of Examiners in are set out and collected by that organization.
- (c) The Board adopts the determination of the National Board of Examiners in Optometry and the Association of Regulatory Boards of Optometry as to the passing scores for their respective examinations and certification directly from the organizations of such applicant scores to the Board shall constitute successful completion of those examinations.
- (2) Applicant's Graduating On or After January 1, 1992.
- (a) All such applicants must successfully complete all parts of the revised format National Board of Examiners in Optometry's examination which includes clinical skills assessment.
- (b) The Board adopts as its written licensure examinations those administered by the National Board of Examiners in Optometry and the Association of Regulatory Boards of Optometry or its predecessor organization as they exist after January 1, 1992 for all applicant's graduating on or after January 1, 1992.
- (c) The fees to take the examinations administered by the National Board of Examiners in Optometry are set out and collected by that organization.
- (d) The Board adopts the determination of the National Board of Examiners in Optometry as to the passing scores for their examination and certification sent directly from them to the Board of such applicant scores shall constitute successful completion of those examinations.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-115.*

Rule 1045-2-.05, Continuing Education, is amended by deleting part (2) (a) 3. in its entirety and substituting instead the following language, so that as amended, the new part (2) (a) 3. shall read:

- (2)(a) 3. Educational courses approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-119.*

Rule 1045-2-.11, Scope of Practice, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Universal Precautions For The Prevention Of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-3-.01 through 1200-14-3-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

**Authority:** *§§4-5-202, 4-5-204, and 63-8-112.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of November, 2001. (11-23)

## **BOARD OF REGISTRATION IN PODIATRY - 1155**

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-125. 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 16<sup>th</sup> day of January, 2002.

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 1155-3-.02, Education and Training Requirements, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (4), so that as amended, the new catchline and the new paragraphs (1), (2), (3), and (4) shall read:

**1155-3-.02 EDUCATION, TRAINING, AND EXAMINATION REQUIREMENTS.**

- (1) Education Requirement—The applicant shall cause to be submitted to the Board’s administrative office official verification of attendance and successful completion of six (6) contact hours of didactic instruction in the field of x-ray operation.
  - (a) The instruction shall include, but not be limited to, radiographic imaging equipment, principles of radiographic exposure, radiation safety and protection, patient care and positioning, radiographic quality, radiographic film processing, radiographic image protection, and quality control methods.
  - (b) The six (6) contact hours of didactic instruction may be obtained by attending a course on x-ray operation provided or sponsored by the American Podiatric Medical Association (APMA), a state or regional affiliate of the APMA, an affiliated specialty group, the United States government, or a Board-approved course on x-ray operation. Requests for approval of coursework must be received in the Board’s administrative office at least forty-five (45) days prior to commencement of the course.
  - (c) Verification of successful completion of the requirements of this paragraph must be sent directly to the Board by the course provider.
- (2) Training Requirement—The applicant shall cause to be submitted to the Board’s administrative office official verification of successful completion of at least sixty (60) hours of supervised clinical experience.
  - (a) The supervised clinical experience shall include, but not be limited to, training in radiographic methodology, technique, patient care and positioning, equipment maintenance, radiation protection and x-ray quality control.
  - (b) The x-ray operator, while attaining the supervised clinical experience, may take x-rays only in the presence of the supervising licensed podiatrist or a certified podiatric x-ray operator.
  - (c) Verification of successful completion of the requirements of this paragraph must be sent directly to the Board by the supervising licensed podiatrist on a form provided by the Board.
- (3) Examination Requirement
  - (a) In order to be certified pursuant to this Chapter, the applicant must successfully complete an examination approved by the Board and must correctly answer at least sixty-five percent (65%) of the questions on that examination.
  - (b) The examination administered by the TPMA at its annual meeting and the Podiatric Medical Assistant, Certified (PMAC) examination given by the American Society of Podiatric Medical Assistants are two (2) examinations deemed adequate to meet the requirement of subparagraph (3) (a).

- (3) Application review, approval, denial, and interview decisions shall be governed by Rule 1155-2-.07.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 63-3-106, and 63-3-125.*

Rule 1155-3-.04, Continuing Education, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Each person certified by the Board must biennially complete four (4) hours of radiological related continuing education in courses provided or sponsored by the APMA, a state or regional affiliate of the APMA, an affiliated specialty group, the United States government, or other courses approved by the Board.

**Authority:** *T.C.A. §§4-5-202, 4-5-204, 63-3-106, and 63-3-125.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of November, 2001. (11-25)

### **BOARD OF SOCIAL WORKER CERTIFICATION AND LICENSURE - 1365**

There will be a hearing before the Tennessee Board of Social Worker Certification and Licensure to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-23-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 12<sup>th</sup> day of March, 2002.

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 1365-1-.05, Procedures for Certification and Licensure, is amended by deleting subparagraphs (2) (f) and (3) (g) in their entirety and substituting instead the following, so that as amended, the new subparagraphs (2) (f) and (3) (g) shall read:

- (2) (f) Except for applicants who are currently certified in Tennessee as a CMSW, an applicant must provide a photocopy of his diploma or official transcript. An official transcript must be sent directly from the school to the board's administrative office.
- (3) (g) Except for applicants who are currently certified in Tennessee as a CMSW, an applicant must provide a photocopy of his diploma or official transcript. An official transcript must be sent directly from the school to the board's administrative office.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-23-102, 63-23-103, 63-23-108, and 63-23-109.

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of November, 2001. (11-07)

**WILDLIFE RESOURCES COMMISSION - 1660**

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. 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 Ducks Unlimited Conference Center of the Ducks Unlimited Headquarters, located at One Waterfowl Way, Memphis, Tennessee, commencing at 9:00 A.M., local time, on the 31st day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Carolyn Wilson, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204 and telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Sheryl Holtam, Attorney, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, telephone number (615)781-6606.

**SUBSTANCE OF PROPOSED RULES****AMENDMENT**

Rule 1660-1-2-.02 Migratory Bird Hunting is amended as follows:

Paragraph (1) is amended by deleting it in its entirety and by substituting instead the following new paragraph:

- (1) The following regulations apply only to Woods Reservoir of A.E.D.C., Barkley Units I and II, Cheatham Lake, Old Hickory-Units I and II, Camden Units I and II, Big Sandy, Cordell Hull, Gooch-Unit A, Harmon=s Creek, Haynes Bottom, Reelfoot, Tigrett, and West Sandy Wildlife Management Areas, except for portions of Barkley and Cheatham Lake Wildlife Management Areas as noted in Paragraph (3) of these Rules and Regulations.
  - (a) For the purpose of this rule the following definitions apply:
    1. A permanent draw blind site is a waterfowl hunting blind location established by the Tennessee Wildlife Resources Agency and assigned annually by a random drawing as provided in Paragraph (3) of Rule 1660-1-8-.05.
    2. A temporary blind is either a structure assembled or placed for one day of waterfowl hunting: a boat that is used for one day of waterfowl hunting: or, a site consisting of the use of natural vegetation or conditions for concealment for one day of waterfowl hunting.
    3. A permanent registered blind site is a waterfowl hunting blind location registered to a specific individual on Reelfoot or West Sandy identified with geographic coordinates. These sites may not be relocated or transferred to another individual. It is the intent that over time all permanent registered blind sites will be converted to permanent draw blind sites or temporary blind sites.
    4. A permanent blind is either a permanent registered blind, a permanent draw blind, or a permanent public blind site.
    5. A subimpoundment is the water managed by the Tennessee Wildlife Resources Agency or its management partner in association with waterfowl hunting and habitat management.
  - (b) No waterfowl hunting on Barkley, Camden-Unit I, Cheatham Lake, Cordell Hull, Gooch-Unit A, Haynes Bottom, Old Hickory-Units I and II, and Woods Reservoir of A.E.D.C. Wildlife Management Areas during the late waterfowl seasons, except from fixed (floating or post type) blinds registered with the Tennessee Wildlife Resources Agency except as provided for in proclamation and as exempted in subparagraphs (g), (h), and (k) below. Permanent draw blinds and temporary blinds must be within five (5) feet of designated stakes. Designated stakes may not be moved without approval of the area manager.
  - (c) All permanent draw blind construction must be completed by the fourth Monday in October. To be considered completed an adequate framed structure with minimum dimensions of 4 feet wide, 4 feet high and 8 feet long not to exceed 25 feet in length and 12 feet in width with walls consisting of netting wire, or solid material to which camouflage can be attached must be in place. All camouflage must be completed by opening day of waterfowl season. Pits may be constructed on sites as designated. Any blinds not meeting these requirements will be cancelled.

- (d) No more than six individuals age sixteen (16) or older may occupy a permanent draw blind at any time.
- (e) The permittee, who is the person to whom the Agency issued the permit, must occupy his/her blind by the legal daily opening shooting time on days he/she wishes to hunt, and if the blind is unoccupied at that time by the permittee, the first person or party occupying said blind shall be entitled to the privilege of its exclusive and uninterrupted use until the end of the shooting hours of that day. Exclusive and uninterrupted use entitles the person or party to the right to exclude all others from the blind, at the person=s or party=s option, except for law enforcement personnel engaged in the performance of their duties. The permittee has priority use (exclusive and uninterrupted use) only if he/she is at the blind on or before the legal daily opening shooting time, regardless of whether or not the blind is occupied by another person or party, provided the permittee produces identification and his/her blind permit.
- (f) All blinds must be removed from the reservoir and government property by May 1 of the following year except on Barkley Unit II where all blinds must be removed by February 27. Any blind not removed will become the property of the Tennessee Wildlife Resources Agency for future use and/or destruction.
- (g) If any waterfowl blind permittee violates any of the Rules and Regulations contained herein, he/she is subject to have his/her blind permit canceled in addition to the penalty prescribed by law.
- (h) Hunting will be permitted from permanent draw blinds and temporary blinds on Camden-Unit II, Big Sandy (including Gin Creek Unit), Barkley Unit II, Cordell Hull, Harmon=s Creek, Tigrett, and West Sandy in accordance with statewide rules and regulations. Any temporary blinds or hides and decoys must be at least 200 yards from any permanent blind and must be removed from the area at the end of shooting each day. All permanent blinds must be within 5 feet of designated stakes.
- (i) Hunting will be permitted from permanent draw blinds and staked positions for temporary blinds on Old Hickory-Unit I and Unit II. Hunting from temporary blinds is on a first-come, first-serve basis. Any temporary blinds constructed on staked positions and decoys must be removed from the area at the end of shooting hours each day.
- (j) Trespassing or disturbance is prohibited in posted areas during the waterfowl season.
- (k) Public access will be prohibited in the subimpoundments of Barkley-Unit I, Cheatham Lake, Haynes Bottom, Old Hickory-Units I and II, Camden Units I and II, Big Sandy, Gooch-Unit A, Tigrett, and West Sandy from two hours after legal shooting hours have ended until four a.m. the following day during the late duck season(s).
- (l) Blinds not chosen at the blind allocation drawing or canceled by Tennessee Wildlife Resources Agency will become temporary blind sites for the year of the drawing.

Paragraph 2, subparagraph (c) 4., is amended by deleting it in its entirety and by substituting instead the following new paragraph:

- (c) Reelfoot Wildlife Management Area
  - 4. A permanent registered blind site holder may annually designate other individuals who may for that season be permitted priority use of their permanent blind sites. These persons, hereinafter referred to as sign-ons, must be identified at the time of the blind site registration and must sign on in person or the registrant may present notarized signatures proving the identify of his sign-ons. Sign-ons to permanent registered blind sites which are registered through certified mail, must join in the execution of the affidavit described in Paragraph No. 2.



Paragraph (2), subparagraphs (d)(i), 5., 8., 9. are amended by deleting them in their entirety and by substituting instead the following new paragraphs:

(d) West Sandy Wildlife Management Area

- (i) A permanent blind is a framed structure of a minimum of 4 feet wide, 4 feet high and 8 feet long not to exceed 25 feet in length and 12 feet in width with walls consisting of netting wire or solid material to which camouflage is or may be attached that is constructed on or moved to either a permanent registered blind site or a permanent draw blind site.
- 5. A permanent registered blind site holder may annually designate other individuals who may for that season be permitted priority use of their permanent blind sites. These persons, hereinafter referred to as sign-ons must be identified at the time of the blind registration
- 8. The permittee, who is the person to whom the Agency issued the permit, must occupy his/her blind by the legal daily opening shooting time on days he/she wishes to hunt, and if the blind is unoccupied at that time by the permittee, the first person or party occupying said blind shall be entitled to the privilege of its exclusive and uninterrupted use until the end of the shooting hours of that day. Exclusive and uninterrupted use entitles the person or party to the right to exclude all others from the blind, at the person=s or party=s option, except for law enforcement personnel engaged in the performance of their duties. The permittee has priority use (exclusive and uninterrupted use) only if he/she is at the blind on or before the legal daily opening shooting time, regardless of whether or not the blind is occupied by another person or party, provided the permittee produces identification and his/her blind permit.
- 9. Neither permanent registered blind site holders nor their sign-ons may compete for nor may they be registered or signed on any other Tennessee Wildlife Resources Agency blind site in the state.

**Authority:** T.C.A. §70-4-107

**CHAPTER 1660-1-8-.05  
PERMIT APPLICATIONS AND DRAWINGS**

**AMENDMENT**

Paragraph (3) is amended by deleting it in its entirety and by substituting instead the following new paragraph:

- (3) Waterfowl blind drawing and allocation procedure on wildlife management areas (excluding Blythe Ferry).
  - (a) For the purpose of this rule the following definitions will apply:
    - 1. A party is one to six individuals making application to participate in the Tennessee Wildlife Resources Agency waterfowl blind drawings.
    - 2. A computer eligibility drawing is the random selection of applicants to participate in the waterfowl blind allocation drawing.
    - 3. A blind allocation drawing is a random selection of successful eligibility applicants for specific wildlife management areas to determine blind site priorities.

- (b) Permanent draw blind sites will be allocated by hand-held drawings for the wildlife management areas: Barkley Units I and II, Big Sandy (including Gin Creek Unit), Camden-Units I and II, Cheatham Lake, Cordell Hull, Gooch-Unit A, Harmon=s Creek, Haynes Bottom, Old Hickory-Units I and II, Reelfoot (except as provided in Rule 1660-1-2-.02), Tigrett, West Sandy, and Woods Reservoir of A.E.D.C.
- (c) Each individual desiring to participate in the waterfowl computer blind eligibility drawing must complete an application supplied by the Tennessee Wildlife Resources Agency. Each applicant must be at least sixteen (16) years of age prior to the blind allocation drawing. If an individual=s name appears on more than one application, that individual will be rejected and the individual will be subject to prosecution.
- (d) All information requested on the application must be completed by the applicant. Failure to clearly specify all information will result in the application being returned.
- (e) All individuals wishing to hunt together as a party must submit their applications together as one unit, indicating the identical area on all individual applications. The number of applicants comprising a party may not exceed six (6) members. If the number of applicants exceeds the maximum party size, all applications of that party will be returned.
- (f) No individual or party may apply for more than one area.
- (g) Individuals must have the following licenses and permits in order to compete in the computer eligibility drawing and the blind allocation hand drawings:

All areas (except Reelfoot)-Annual Hunting and Fishing License, Annual Small Game and Waterfowl Permit, Annual Waterfowl License or Sportsman License, or any Lifetime Sportsman License.

Reelfoot - Annual Hunting and Fishing License, Annual Reelfoot Preservation Permit, Annual Waterfowl License or Sportsman License, or any Lifetime Sportsman License.
- (h) Applications will be available only at locations and during periods as designated by the Tennessee Wildlife Resources Agency. Applications must be received by the Tennessee Wildlife Resources Agency as specified on the application. Applications received after the specified date will be rejected.
- (i) A computer eligibility drawing will be held to determine successful applicants. Successful applicants will be notified by mail and authorized to participate in hand-held blind allocation drawings for the designated wildlife management areas. Blind allocation drawings will be held the last Saturday in August at sites designated by the Tennessee Wildlife Resources Agency.
- (j) Each eligible applicant may participate in the designated hand-held blind allocation drawings and if any member of the party is drawn, the entire party is successful, and therefore ineligible for the remainder of the drawing. At least one member of a party must be present at the blind allocation drawing for the party to participate in the drawing.
- (k) Eligible applicants will be drawn to establish priorities for choice of blind sites. A designated number of parties will be drawn in the alternate drawing to allow unissued sites to be utilized.
- (l) Permits for selected blinds will be issued at the time of the blind allocation drawing. Blind sites not selected at the blind allocation drawing will be offered to a prioritized list of alternate parties established in the alternate drawing. Blinds not chosen or canceled by the Tennessee Wildlife Resources Agency will become temporary blind sites for that year.

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

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2001. (11-35)

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## WILDLIFE PROCLAMATIONS

### TENNESSEE WILDLIFE RESOURCES COMMISSION - 1680

#### SPORT FISHING PROCLAMATION 01-17

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119 thereof, the Tennessee Wildlife Resources Commission proclaims the following regulations, effective March 1, 2002.

#### **SECTION I. ENDANGERED SPECIES, GENERAL SEASONS, CREEL AND POSSESSION LIMITS, AND MINIMUM LENGTHS**

**A. ENDANGERED SPECIES**

All fish identified as endangered or threatened or listed as in need of management as proclaimed by the Tennessee Wildlife Resources Commission may not be taken.

**B. GAME FISH SPECIES**

The season is open year-round on the following species, unless otherwise specified in this proclamation. The possession limit is twice the daily creel limit.

Only the daily creel limit may be possessed while afield. It shall also be unlawful to possess while afield any fish which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

<u>SPECIES</u>	<u>DAILY LIMIT</u>	<u>MINIMUM LENGTH</u>
Rock bass	20	No length limit
Black bass (all species in combination). Except as listed below and in Section V, VI, and VII.	5	No length limit
All species from Reelfoot Lake, Reelfoot Watershed Lake #18, Gooch Unit E		15"
All species from Indian Boundary Lake	2	14"
Largemouth and smallmouth bass from Watauga Reservoir.		12"
Largemouth and spotted bass from Watts Bar, Chickamauga, and Nickajack Reservoirs		14"
Largemouth bass and smallmouth bass from Cheatham, Fort Loudoun, Kentucky, Old Hickory, Tellico, and Melton Hill Reservoirs (Kentucky Reservoir to change to 15" min. length limit in 2003)		14"
Largemouth and smallmouth bass from Boone, Barkley, Center Hill, Cherokee, Percy Priest, Tims Ford, and Normandy Reservoirs		15"
Largemouth bass from Dale Hollow Reservoirs.		15"
Largemouth bass from Norris Reservoir		14"
Smallmouth bass from Norris Reservoir		18"

<u>SPECIES</u>	<u>DAILY LIMIT</u>	<u>MINIMUM LENGTH</u>
Smallmouth bass from Dale Hollow Reservoir *One smallmouth bass under 16" and one smallmouth bass over 21"	2	16-21"slot *
Smallmouth bass from Pickwick Reservoir		14"
Smallmouth bass from Watts Bar (to change to 18 " min. length in 2004)	1	16"
Smallmouth bass from Chickamauga, Nickajack and Gunterville Reservoirs.	1	18"
Smallmouth bass from Douglas Reservoir (upper boundaries: Hale Bridge on the Nolichucky River and Rankin Bridge on the French Broad River), Pigeon River (from the confluence with the French Broad River to North Carolina state line), and Little Pigeon River (including East and West Prongs) to GSMNP boundary	1	20"
Spotted bass from Center Hill Reservoir		12"
Spotted bass from Norris, Cherokee, Douglas, Fort Loudoun, Boone, Ft. Patrick Henry, South Holston, Melton Hill, Tellico, John Sevier, Davy Crockett, Watauga, Chilhowee, and Calderwood Reservoirs	15	

Note: For this proclamation, a spotted bass is defined as any black bass that has a patch of teeth on the central portion of the tongue.

\* See Special Definition Section for specific area descriptions of Cherokee, Norris, and Boone Reservoirs where size limits on smallmouth bass and largemouth bass apply.

<u>SPECIES</u>	<u>DAILY LIMIT</u>	<u>MINIMUM LENGTH</u>
Sauger except as listed below from Kentucky Lake	10	15" 14"
Walleye except as listed below Walleye from Tellico Reservoir *only one walleye can be 24" or larger	5	16" 15" *
Walleye or sauger or in combination from Cherokee, Chilhowee, Douglas, Fort Loudoun, Melton Hill, South, Holston, Tellico, and Watauga Reservoirs and their tributaries	10	15"
Walleye or sauger or in combination from Norris Reservoir and its tributaries (upstream to Grissom Island on the Clinch River)	5	15"
Walleye, sauger, saugeye or in combination from Normandy Reservoir and its tributaries	15	15"

Note: For this proclamation, any walleye-sauger hybrid (saugeye) is considered the same as a sauger.

Striped Bass or Cherokee Bass (Striped Bass x White Bass Hybrid), or in combination except as listed below. On Norris Reservoir during April through October statewide regulations apply, but during November through March the creel and size limits are	2	15"
On Cordell Hull Reservoir *Only 1 striped or Cherokee bass per day can be over 42"	1	24" 32-42" slot *
On Cherokee Reservoir-see SECTION II. WATERS WITH CLOSED SEASONS		

<u>SPECIES</u>	<u>DAILY LIMIT</u>	<u>MINIMUM LENGTH</u>
Muskellunge	1	30"
Crappie (white and black combined) except as listed below	30	10"
from private waters		No length limit
from Mississippi River		No length limit
(river proper, sloughs and oxbows, the Hatchie, Loosahatchie, Forked Deer, Wolf, and Obion Rivers and their tributaries).		
from Norris Reservoir.	10	10"
from Dale Hollow, Center Hill, Douglas, Watauga, Cherokee, South Holston, Ft. Patrick Henry, John Sevier, Boone Reservoirs	15	10"
from Pickwick and Guntersville Reservoirs		9"
from State Park Lakes, Reelfoot Lake, Indian Boundary and Davy Crockett Reservoirs		No length limit
White bass	30	No length limit
Northern pike		No limits
Yellow bass		No limits
Bluegill and other bream (except as listed below)		No limits
from Norris Lake	30	No length limit
Pickrel		No limits
Yellow perch..		No limits
Trout (combined daily creel limit-all trout) except as listed below	7	6" *
6" size limit is for brook trout only		
Lake trout.	2	
See Sections II, III, and IV for other trout regulations.		

C. NON-GAME FISH SPECIES

The season is open year-round unless otherwise specified in this proclamation. It shall be unlawful to possess while afield any fish which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

	<u>DAILY LIMIT</u>	<u>MINIMUM LENGTH</u>
Non-game species except as listed below and in Section V, VI and VIII.		No limits
Catfish (blue and channel) when taken from Allen Branch Pond, and Indian Boundary Lake.	5	
Beech River Watershed Lakes	5	15"
Paddlefish*.	1	30"
*May be harvested only from Cherokee Reservoir March 1 through March 15		

**SECTION II. WATERS WITH CLOSED SEASONS**A. Land Between the Lakes Wildlife Management Area:

All waters open year-round, except the following:

(a) Farm ponds - Open to fishing except those ponds posted as closed.

(b) Bards Lake - Trotlines and limblines prohibited. Jugs permitted from October 1 through March 21 with a limit of 10 per person.

B. Catoosa Wildlife Management Area:

All streams and ponds are open from April 1 through December 31, except on dates of managed big game and turkey hunts.

C. Woods Reservoir: See Proclamation 74-17 for areas closed to fishing.D. Buffalo Creek (Grainger County): Closed to all fishing and minnow seining from the mill dam upstream.E. Doakes Pond (Norris Reservoir) - That portion of Norris Reservoir known as Doakes Pond (a sub-impoundment), located adjacent to Highway 63 approximately 9 miles NE of LaFollette, is closed to fishing.F. South Holston Reservoir: Closed to trout fishing December 1 through the last day of February.G. Center Hill Lake and Tributaries - Closed to taking or possessing of paddlefish.H. Clear Creek (tributary to the Clinch River, Anderson County) - closed to all fishing including minnow seining from Highway 441 upstream to the second dam (adjacent to the City of Norris water tower), as posted, from December 1 through March 31.

## I. All TWRA and USFWS hatchery ponds and raceways are closed to fishing year-round.

J. Little Buffalo River, Laurel Hill WMA - Closed to all fishing from March 1 through April 30.

## K. South Holston Tailwater - Closed to all fishing from November 1 through January 31 in the following areas:

1) Hickory Tree Bridge upstream to the confluence with Bottom Creek.

2) Downstream point of Boy's Island (the first island downstream of Weaver Pike Bridge) upstream to the top of the first island above Webb Road Bridge.

## L. On Cherokee Reservoir, a closed fishing zone will be in effect from July 15 through September 15. This zone is enclosed by lines from the boat ramp at the south end of the dam across the lake to Point 2, from Point 2 to Point 3, and from Point 3 back across the lake to the TWRA boat ramp at the north end of the dam. All bank fishing will be open and the coves along the southeast shoreline will be open to boat fishing, but no fishing for any species will be allowed in the described zone from July 15 through September 15.

**SECTION III. CHEROKEE WILDLIFE MANAGEMENT AREA - SPECIAL REGULATIONS**

## I. Tellico Area - Daily Permit Required

- ♦ Tellico River from its confluence with Turkey Creek upstream to the Tennessee-North Carolina state line during the period March 15 through September 15
- ♦ Citico Creek upstream from its confluence with Little Citico Creek during the period March 15 through September 15



- ♦ Green Cove Pond (see Section III 6)
  - a. Fishing permitted year-round. Closed on Thursday and Friday, during the period March 15 through September 15 (except when national or state holidays fall on Thursday or Friday). From September 16 through March 14 fishing is allowed every day and no permit is required.
  - b. Daily limit - 7 trout; possession limit - 14 trout.
  - c. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset. The possession of fishing equipment and/or tackle is prohibited on stream banks except during legal fishing hours.
  - d. Each fisherman permitted only one rod or pole.

## 2. Wild Trout Streams

### GROUP I

- North River and tributaries
  - Bald River and tributaries
  - North Fork of Citico Creek and tributaries
  - South Fork of Citico Creek and tributaries
  - Laurel Fork and tributaries on Cherokee WMA beginning at the cable crossing 1/2 mile upstream from the USFS Dennis Cove Recreation Area and extending upstream
  - Gee Creek and tributaries in Polk County
  - Wolf Creek and tributaries in Polk County
  - Beaverdam Creek and tributaries from its confluence with Birch Branch downstream to Tank Hollow Road (USFS Rd. 6044)
  - Paint Creek and tributaries in Greene County-from USFS campground upstream to U.S. Forest Service Boundary line south of Highway 70 near Munday Gap.
- a. Fishing permitted year-round.
- b. Daily limit - 3 trout; possession limit - 6 trout.
- c. Size limit - Rainbow and brown trout 9 inches minimum Brook trout..6 inches minimum
- d. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
- e. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset.
- f. Each fisherman permitted only one rod or pole.

### GROUP II

- Rocky Fork Creek and tributaries on lands owned by SF Rocky Fork Holdings, Inc.
- Higgins Creek and tributaries
- Squibb Creek and tributaries
- Sarvis Cove and tributaries
- Dry Creek and tributaries (Greene County) upstream from the U.S. Forest Service boundary.
- Sycamore Creek and tributaries
- Rough Ridge Creek and tributaries

- a. Fishing permitted year-round.
  - b. Daily limit - 7 trout; No more than 3 may be brook trout.  
Possession limit - 14 trout; No more than 6 may be brook trout.
  - c. Size limit - Rainbow and brown trout No minimum  
Brook trout.....6 inches minimum
  - d. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
  - e. Fishing permitted from 1/2 hour before official sunrise to 1/2 hour after official sunset.
  - f. Each fisherman permitted only one rod or pole.
3. Calderwood Reservoir
- a. Appropriate licenses from Tennessee or North Carolina are legal on the entire reservoir while fishing from a boat.
  - b. Fishing permitted year-round.
  - c. Size limit - none
  - d. Daily limit - 7 trout; possession limit - 14 trout
  - e. Trotlines and limblines prohibited.
4. Slickrock Creek
- That portion of Slickrock Creek which constitutes the boundary between the states of Tennessee and North Carolina.
  - a. Appropriate licenses from Tennessee or North Carolina are valid on this portion of Slickrock Creek.
  - b. Fishing permitted year-round.
  - c. Daily limit - 4 trout; possession limit - 8 trout.
  - d. Size limit - Rainbow, brown, and brook trout. 7 inches minimum
  - e. Fishing permitted one-half hour before sunrise to one-half hour after sunset.
  - f. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
  - g. Each fisherman permitted only one rod or pole.
5. All other streams in the Cherokee Wildlife Management Area not listed above.

- a. Fishing permitted daily.
- b. Daily limit - 7 trout; possession limit - 14 trout.
- c. Each fisherman permitted only one rod or pole.

6. Green Cove Pond

Fishing permitted year-round. Closed on Thursday and Friday (except when national or state holidays fall on Thursday or Friday) year-round.

- a. Fishing limited to handicapped individuals (see Section XVI), children under age 13 and adults 65 years of age and older.
- b. Tellico-Citico daily permit required year-round.
- c. Season is open year-round.
- d. Days closed - Thursday and Friday except open on all state and national holidays and scheduled special organized handicapped or children fishing events.
- e. Creel limit - 7 trout per day.
- f. Size limit - no restrictions.
- g. Hours open - one-half hour before sunrise to one-half hour after sunset.
- h. Bait restrictions - no minnows.

**SECTION IV. TROUT FISHING-SPECIAL REGULATIONS**

- A. Quality Trout Fishing Areas:  
The areas listed below are designated as quality trout fishing areas and all have regulations as described in 1 a., b., c., and d. below.
  1. Hiwassee River: That portion of the Hiwassee River from the L & N Railroad Bridge upstream to the U.S. Forest Service's "Big Bend Parking Area".
  2. Watauga River: That portion of the Watauga River from Smalling Bridge downstream to the bridge at the town of Watauga.
  3. Little Buffalo River (Lawrence County): That portion of the Little Buffalo River within the Laurel Hill WMA from the Finnie Road crossing upstream (Closed to fishing from March 1 through April 30).
    - a. Daily limit - 2 trout; Possession limit - 2 trout.
    - b. Size limit - 14" minimum.
    - c. Artificial lures only. Use or possession of bait is prohibited.

- d. Trout less than 14" in length may not be possessed within quality trout fishing areas.
- B. City of Gatlinburg:
- 1. Waters Open:  
The taking of trout is permitted within the streams designated below and under the limits and during the times contained herein.
    - a. General Streams:
      - West Prong Little Pigeon River from Park Boundary to Gnatty Branch except those sections set aside as Children's Streams.
      - Dudley Creek from Park Boundary to West Prong Little Pigeon River, except those sections set aside as Children's Streams.
      - Roaring Fork upstream to the Park Boundary.
      - Leconte Creek from Painter Branch to West Prong Little Pigeon River.
    - b. Children's Streams (may only be fished by children 12 and under)
      - Leconte Creek from Painters Branch upstream to Park Boundary.
      - West Prong Little Pigeon River from 100 yards above entrance of North Gatlinburg Park downstream to Gatlinburg By-pass Bridge.
      - Dudley Creek from Highway 441 Bridge to West Prong Little Pigeon River.
  - 2. Season and Creel Limits:
    - a. Fishing permitted year-round, except on Thursday, from 1/2 hour before official sunrise to 1/2 hour after official sunset.
      - 1). From December 1 through March 31:
        - a). Possession of any trout shall be prohibited.
        - b). All trout caught must be immediately returned to the water.
        - c). Use or possession of bait is prohibited. Use or possession of any artificial lures other than single hook artificial flies, spinners, and spoons is prohibited. The use of one dropper fly having a singlehook which is separated from a legal lure by a length of line is permissible.
      - 2). From April 1 through November 30:
        - a). Daily creel limit shall be five (5) trout.
        - b). Total possession limit shall not exceed twice the daily creel limit
        - c). While fishing or when afield, possession of more than the daily creel limit shall be prohibited, regardless of whether the trout are fresh, stored in an ice chest, in a vehicle, or otherwise preserved.
    - b. Creel Limits:
      - General Streams - The creel limit is five (5) trout per day.
      - Children's Streams - The creel limit is two (2) per day for children twelve (12) and under.
    - c. Methods: Fishing is permitted with one hand-held rod and single hook only.
    - d. Daily Fees:
      - 1. In addition to the State licensing requirement, all Tennessee Residents ages 9 through 64 must possess a special Gatlinburg daily permit. The permit fee is \$2.00; provided that a non-resident may purchase a 1-day all inclusive permit, in lieu of the normal license/permit combination for a total fee of \$10.00. Non-residents under the age of 9 are exempt from the Gatlinburg daily permit.

## C. Dale Hollow Reservoir:

1. April 1-October 31 - Daily creel limit 7 trout  
No more than 2 may be lake trout..no size limit
2. November 1-March 31 - Daily creel limit 2 trout  
Minimum size limit 22 inches

## D. Horse Creek (Greene County):

That portion from the U.S. Forest Service boundary line upstream to the junction of Squibb Creek.  
Creel limit: 7 per day except from May 1-September 30 when the limit is 2 per day.

## E. South Fork of the Holston River:

From the South Holston Dam to Highway 37 Bridge at Bluff City  
- 16-22 inch slot (protected length range), - 7 trout, only 1 of which can over 22 inches.

## F. Delayed Harvest Areas: In the areas listed below, the harvest or possession of trout will be prohibited during the catch-and-release season. During the catch-and-release season, only artificial lures are permitted and the use or possession of bait is prohibited.

1. Paint Creek-Paint Creek Campground downstream to mouth at French Broad River. Catch-and-release season-October 1 through the last day of February.
2. Tellico River-Mouth of Turkey Creek downstream to the Oosterneck Creek Recreation Area. Catch-and-release season will be from October 1 through March 14.

## G. Little Jacob Creek in Sullivan County: only 3 trout in daily creel limit may be brook trout.

## H. Left Prong Hampton Creek in Carter County: only 3 trout in daily creel limit may be brook trout.

## I. Big Creek, Goforth Creek, Sheeds Creek, Spring Creek, and Sylco Creek and their tributaries in Polk County.

- Closed to fishing on Fridays from March 1 to July 1 (except State and Federal holidays).
- Only a single hook lure or a baited single hook is allowed. Use or possession of multiple hook lures or bait is prohibited.
- Fishing permitted only from one half-hour before sunrise to one-half hour after sunset.
- The possession of fishing equipment or tackle is prohibited on stream banks except during legal fishing hours.

**SECTION V. WILDLIFE AGENCY LAKES AND WILDLIFE MANAGEMENT AREAS**

## A. Lakes in the Wildlife Agency Lakes Management System are: Coy Gaither-Bedford, Browns Creek, Carroll, Davy Crockett (Humboldt), Garrett, Graham, Herb Parsons, Laurel Hill, Maples Creek, Marrowbone, VFW, Whiteville, Williamsport, Glenn Springs, and Reelfoot-Indian Creek Watershed Lakes.

## B. Seasons, Creel Limits, Size Limits, and Hours of Operation

1. Unless noted in Section II. Wildlife Agency Lakes are open year-round. Lakes will be open 1/2 hour before sunrise and close 1/2 hour after sunset. Except Garrett Lake is open 24 hours.

2. Creel and Size Limits:

Statewide limits apply except as listed below:

	<u>DAILY LIMIT</u>	<u>MINIMUM LENGTH</u>
Catfish (blue and channel combined).	5	
from Bedford, Laurel Hill, Williamsport Public Fishing Lakes..	5	14"
Black bass (all species)		
from Williamsport Public Fishing Lakes	1	20"
from Glenn Springs, Marrowbone, Browns Creek, Bedford.	5	14-18" slot *
*only 1 bass per day greater than 18"		
from Lake Graham, Herb Parsons, Laurel Hill ..	10	14-18" slot *
*only 1 bass per day greater than 18"		
from Davy Crockett Lake.	10	
Bluegill and Redear Sunfish (combined):		
from Laurel Hill, Bedford, Glenn Springs, Williamsport Agency Fishing Lakes..	20	

C. Williamsport Public Fishing Lakes :  
Whipporwill Lake is "youth fishing" only. Only youths 16 and under and an accompanying adult may fish.

D. Laurel Hill Lake: The embayment above the road that lies between the concession building and the campground is a "Youth fishing" only fishing area. Youths 16 and under may fish.

E. Methods for Wildlife Agency Lakes:

1. Except for jug fishing as listed below, only rods and reels, poles, and hand-held lines may be used.
2. Jug fishing will be permitted daily from April 1 through September 30 except Saturday, Sunday, Memorial Day, Independence Day, and Labor Day, and daily from October 1 through March 31. Jugs are limited to ten (10) per boat. Jugs must be marked with the owner's name and address.

F. Bridgestone/Firestone Centennial Wilderness WMA Ponds are designated as youth fishing ponds. Fishing is permitted for youths 16 years of age or younger who are accompanied by a non-fishing adult (18 years of age or older). Youths are limited to using one (1) pole or rod while fishing. The ponds will be open on Tuesdays, Thursdays, and Saturdays only, beginning with Tennessee's Free Fishing Day through Labor Day.

Daily creel limits: Bluegill - 10  
                                   Channel Catfish - 5  
                                   Largemouth bass - 0 (catch and release only)

**SECTION VI. DEPARTMENT OF ENVIRONMENT AND CONSERVATION MANAGED LAKES**

Statewide fishing regulations apply on lakes managed by the Tennessee Department of Environment and Conservation except as listed below:

Black bass from the following lakes must be a minimum of 15":

- Falling Water (Burgess Falls) Lake, Burgess Falls Natural Area
- Lake Lajoie, Chickasaw State Park
- Lake Placid, Chickasaw State Park
- Byrd Lake, Cumberland Mountain State Park
- Lake Lindsey, David Crockett State Park
- Fall Creek Lake, Fall Creek Falls State Park
- Sullivan's Pond, Ft. Pillow State Historic Area
- Indian Mt. "B" Lake, Indian Mountain State Park
- Acorn Lake, Montgomery Bell State Park
- Creech Hollow Lake, Montgomery Bell State Park
- Kelly (Standing Stone) Lake, Standing Stone State Park

Black bass from:

- Big Ridge Lake, Big Ridge State Park, must be a minimum of 14"
- Poplar Tree Lake, Meeman-Shelby Forest State Park, 14"-18" PLR (slot limit)
- Travis McNatt Lake, Big Hill Pond State Park, Daily Creel limit of 10 bass (no size limit)

Black bass fishing on the following lakes is restricted to catch-and-release only; i.e., all black bass caught must be immediately released unharmed:

- Lake Woodhaven, Montgomery Bell State Park

Channel or blue catfish or in combination:

- Daily creel limit of 5.

Crappie (white and black combined)

- Daily creel limit of 30
- No minimum size limit

Bluegill and Redear Sunfish in combination:

- Poplar Tree Lake, Meeman-Shelby Forest State Park - Daily creel limit of 20 fish

#### **SECTION VII. SPECIAL REGULATIONS ON LAKES CONTROLLED BY NON-STATE GOVERNMENTAL AGENCIES**

1. Casper Lake (Shelby County) - The minimum size limit on black bass is 16" and the daily creel limit is
2. New Lake (Lewisburg) - Black bass: Creel limit-5; minimum length -13". Open 1/2 hour before sunrise to 1/2 hour after sunset. Only rods and reels and cane poles are permitted.

#### **SECTION VIII. MINNOWS**

1. The catching of minnows for the purpose of sale is prohibited in Cannon, Lincoln, Macon, Moore, Smith, Sumner, and Trousdale counties. The possession limit for minnows taken from streams in the above counties is 150 in Cannon, Macon, Smith Sumner, and Trousdale, 250 in Lincoln and Moore. It shall be unlawful to sell, take for sale, or offer for sale hornyhead minnows (stonerollers) in Carter, Unicoi, Washington, Johnson, Sullivan, and Morgan counties.
2. Minnow traps and seines as defined below may be used to catch minnows subject to all laws and regulations governing the catching of minnows.

- a. A minnow trap is hereby defined as a device used for the purpose of catching minnows. The mouth opening or openings shall not exceed one and one-half (1 1/2") inches in diameter.
- b. A minnow seine is hereby defined as a net having a mesh size no greater than three-eighths (3/8) of an inch on the square, and no greater than ten (10) feet in length.

## SECTION IX. TURTLES

### A. Species, Creel and Size Limits, and Seasons:

1. Only the Common Snapping Turtle - *Chelydra serpentina serpentina* - may be legally taken.
2. All turtles listed as endangered or threatened or listed as "In Need of Management" as proclaimed by the Tennessee Wildlife Resources Commission may not be taken, and include:
  - Bog Turtle - *Clemmys muhlenbergi*
  - Alligator Snapping Turtle - *Macrochelys temmincki*
  - Cumberland Slider - *Trachemys (Pseudemys) scripta troosti*
3. The season is open year-round.
4. The daily limit is 5. The possession limit is twice the daily creel limit. Only the daily creel limit may be possessed while afield.
5. The minimum legal length for the common snapping turtle is 12 inches. For purposes of this proclamation, the length of a turtle is determined by measuring the carapace (upper shell) from front to back.
6. Turtles may be taken by all legal sport fishing methods except archery and spear-guns.
 

Additionally, sport fishermen may take turtles by the use of up to three hoop nets having a minimum mesh size of three-inches (3") on the square in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Lake, Lauderdale, McNairy, Madison, Obion, Perry, Shelby, Stewart, Tipton, and Weakley counties. Each net must be marked with the name and address of the owner. Each net must be set so that a portion of the catch area is above the water.
7. It shall be unlawful to possess while afield any turtle which has been altered to the extent that its species and/or length cannot be determined.
8. At the Reelfoot Wildlife Management Area, all sizes and species of turtles except box turtles and those in Item 2. above may be taken year-round with a daily limit of 5 by legal sport fishing methods.

## SECTION X. GIGGING

- A. Gigging: The taking of fish by means of a hand-held pole or spear with a tip consisting of two or more sharpened and barbed points.
- B. Season open year-round except as noted below.
- C. Waters Open: All waters not closed in Paragraph D. below or elsewhere in this proclamation.



## D. Waters Closed:

## 1. All streams in the following counties closed year-round:

—Bedford	—Lawrence	—Maury
—Giles	—Lewis	—Wayne
—Hickman	—Marshall	

2. East Fork Obey River and tributaries closed January 1 through April 30.
3. Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
4. Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Point 11) on the Elk River arm of Watauga Reservoir closed from December 1 through May 31.

## E. Species which may be taken and creel limits:

1. Non-game species - no limit (except that no paddlefish may be harvested).

**SECTION XI. GRABBLING, GRAB HOOKING, SNAGGING, TUBBING, ARCHERY, SPEAR-GUN FISHING, DIPPING, AND CAST NETTING**

## A. Season open year-round except as noted below.

## B. All waters open except:

1. Within 100 yards below dams except at Pickwick the closed area will extend downstream to the first moorage cell located across from the boat launching ramp. At John Sevier Steam Plant the discharge channel is also closed. Dipping and cast netting are excluded from this restriction.
2. Those areas closed to fishing listed in Section II.
3. All waters closed by separate proclamation.
4. Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30. Cast netting is excluded from this restriction.
5. The Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Point 11) on the Elk River arm of Watauga Reservoir closed from December 1 through May 31. Cast netting is excluded from this restriction.
6. Snagging prohibited year-round on the South Holston tailwater (from South Holston Dam to the headwaters of Boone Reservoir).

## C. Species which may be taken:

1. Non-game species - no limit. (Except that paddlefish may only be harvested from Cherokee Reservoir from March 1 through March 15, with a daily creel limit of 1 fish equal to or larger than 30 inches.)

D. Methods Defined:

1. Grabbling: The taking of fishes with the hands.
2. Grab Hooking: The taking of fishes using one or more single, double, or treble hooks fastened directly to a pole or rod in such a manner that they are not separated from pole or rod by a length of line.
3. Snagging: The taking of fishes using one or more single, double, or treble hooks which are manipulated or jerked through the water in such a manner as to impale or hook fishes.
4. Tubbing: The taking of fishes using a tub or like device which has neither top nor bottom.
5. Archery: The taking of fishes using long, recurve, and compound bows using arrows with barbed points; Crossbows are prohibited.
6. Spear-gun fishing: The taking of fishes using a spear-gun.
7. Dipping: Taking of fishes using a dip net.
8. Cast Netting: The taking of fishes by throwing and retrieving a cast net having a maximum radius of 10 feet and with a mesh size (square measure) of not less than one-fourth (1/4") and not greater than one (1) inch.

**SECTION XII. SLAT BASKETS**

1. A slat basket is defined as a device used for taking non-game fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats which are placed lengthwise and so constructed that there must be a minimum of four (4) openings in the catching area, each being at least 1 1/2" wide and 6" long.
2. Slat baskets as defined above and properly tagged shall be legal in all public waters except TWRA Managed Lakes.
3. Season open year-round.
4. Only non-game fish may be taken. No limit (except that no paddlefish may be harvested).
5. Only one basket tag will be issued to an individual.
6. Possession or use of more than one slat basket is prohibited.

**SECTION XIII. TROTLINES, LIMBLINES, AND JUGS**

- A. Season open year-round except as noted in Section II. and Section V.
- B. All waters open except as follows:
  1. Sport fishing trotlines, limblines, and jugs prohibited within 1,000 yards below any TVA or Corps of Engineers dam.

2. Allen Branch Pond, Indian Boundary Lake, and Chilhowee (McKamy Pond) in Cherokee Wildlife Management Area closed to jug fishing and trotlines. Indian Boundary Lake is also closed to limblines.
  3. Trotlines prohibited in the Beech River Watershed Development Authority lakes, in the New Johnsonville Steamplant Harbor, and within 50 yards of the Danville Railroad Bridge dikes.
  4. Bards Lake on Land Between the Lakes closed to trotlines and limblines.
  5. Trotlines, limblines, and jugs prohibited on Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
- C. Methods Defined:
1. Trotline: A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must not be closer than 24 inches.
  2. Limblining: The use of one or more hooks on a single line suspended from a tree or shrub limb, or from a pole embedded in or braced on the bank.
  3. Jug Fishing: The use of a hook connected by a length of line to a floating buoy (jug).
- D. All species may be taken.
- E. Creel limit on game fish same as statewide; non-game species - no limit (except that no paddlefish may be harvested).
- F. Other Restrictions:
1. Sport fishing trotlines, limblines, and jugs must be tagged and/or marked with the owner's name and address. On trotlines, the tag must be placed on the line within 5 feet of the bank, if the trotline is attached to a bank. On floating trotlines the information shall be marked on the floats. In all other situations, the tag must be placed within 5 feet of either end. On limblines, the tag must be affixed to the line above the water level.
  2. Sport fishing trotlines, limblines, and jugs must be run at least once each day.
  3. Sport fishermen limited to 50 jugs or blocks each except New Johnsonville Steam Plant Harbor and Bards Lake, where the limit is ten (10) jugs or blocks per sport fisherman and on Beech River Watershed Development Authority Lakes where the limit is twenty (20) jugs or blocks per boat. On Bards Lake, jugs are permitted only from October 1 through March 21.
  4. Sport fishing trotlines, limblines, and jugs not fished according to these regulations are subject to be removed by Agency personnel.

#### **SECTION XIV. SHAD TRAWLING**

- A. Season: Year-round.
- B. Waters Open - All waters except within 1,000 yards below any dam.

- C. Method Defined: The taking of threadfin or gizzard shad using a trawl having a mesh size no larger than 1 inch, a hoop diameter no larger than 48 inches, and a net length no longer than 72 inches.
- D. Shad collected cannot be sold.

#### SECTION XV. SPECIAL RESTRICTIONS

- A. Reelfoot Lake. During April and May, the use of gasoline engines to propel boats in selected areas of Reelfoot Lake as posted by TWRA signs is prohibited.
- B. Center Hill Reservoir
  - 1. On the upper end of Center Hill reservoir including Caney Fork River beginning at Rock Island State Park boat launching ramp and extending upstream to Great Falls Dam, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. No more than 3 rods and reels or poles may be used.
- C. Dale Hollow Reservoir
  - 1. Compton boat ramp upstream to Hwy. 52 bridge on the East Fork Obey River arm, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30.
  - 2. No more than 3 rods and reels or poles per boat angler and 6 rods and reels or poles per bank angler may be used.
- D. Umbrella rig restriction - Umbrella rigs are defined as an array of more than 3 artificial lures or baits (with or without hooks) used by a single rod and reel combination. If the hook size is 6 or larger, then only one lure or bait may have a hook and that hook must be a single hook.

#### SECTION XVI. SPECIAL DEFINITIONS

- A. Game Fish:  
The following fish are designated as game fish:

##### Family - Centrarchidae

All fish in the family Centrarchidae, including those listed below and all hybrids, are designated as game fish.

Largemouth bass	<i>Micropterus salmoides</i> (Lacepede)
Smallmouth bass	<i>Micropterus dolomieu</i> Lacepede
Spotted bass	<i>Micropterus punctulatus</i> (Rafinesque)
Redeye bass	<i>Micropterus coosae</i> Hubbs and Bailey
White crappie	<i>Pomoxis annularis</i>
Black crappie	<i>Pomoxis nigromaculatus</i> (Lesueur)
Rock bass	<i>Ambloplites rupestris</i> (Rafinesque)
Warmouth	<i>Lepomis gulosus</i> (Cuvier)
Bluegill	<i>Lepomis macrochirus</i> Rafinesque

Redear sunfish	<i>Lepomis microlophus</i> (Gunther)
Longear sunfish	<i>Lepomis megalotis</i> (Rafinesque)
Green sunfish	<i>Lepomis cyanellus</i> Rafinesque
Flier	<i>Centrarchus macropterus</i> (Lacepede)
Redbreast sunfish	<i>Lepomis auritus</i> (Linnaeus)

Pumpkinseed	<i>Lepomis gibbosus</i> (Linnaeus)
Orangespotted sunfish	<i>Lepomis humilis</i> (Girard)

Family - Percichthyidae

Striped bass	<i>Morone saxatilis</i> (Walbaum)
Cherokee Bass (Striped bass-White bass hybrid)	<i>Morone</i> sp.
White bass	<i>Morone chrysops</i> (Rafinesque)
Yellow bass	<i>Morone mississippiensis</i> (Jordan and Eigenmann)

Family - Percidae

Walleye	<i>Stizostedion vitreum</i> (Mitchill)
Sauger	<i>Stizostedion canadense</i> (Smith)
Walleye-Sauger hybrid (Saugeye)	<i>Stizostedion</i> sp.
Yellow perch	<i>Perca flavescens</i> (Mitchill)

Family - Esocidae

All fish in the family Esocidae, including those listed below and all hybrids, are designated as game fish.

Muskellunge	<i>Esox masquinongy</i> Mitchill
Northern pike	<i>Esox lucius</i> Linnaeus
Chain pickerel	<i>Esox niger</i> Lesueur
Grass pickerel	<i>Esox americanus</i> Lesueur

Family - Salmonidae

All fish in the family Salmonidae, including those listed below and all hybrids, are designated as game fish.

Rainbow trout	<i>Oncorhynchus mykiss</i>
Brown trout	<i>Salmo trutta</i> Linnaeus
Brook trout	<i>Salvelinus fontinalis</i> (Mitchill)
Lake trout	<i>Salvelinus namaycush</i> (Walbaum)
Ohrid trout	<i>Salmo letnica</i>

B. Non-Game Species:

All species except those listed as game fish and those proclaimed by the TWRC to be endangered, threatened, or in need of management.

C. Hooks Defined:

Hooks are defined as follows:

Single hook - 1 point

Double hook - 2 points

Treble hook - 3 points

## D. The use of rods and reels, poles, hand-held lines, and other devices and methods described in this proclamation are the only legal means of sport fishing.

- E. Norris Reservoir:  
For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the Highway 25E Bridge on the Clinch River Arm and upstream to Gap Creek on the Powell River Arm.
- F. Boone Reservoir:  
For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the 11E Bridge at Bluff City on the South Fork Holston River Arm and upstream to the new Austin Springs Bridge on the Watauga River.
- G. Cherokee Reservoir:  
For purpose of size restrictions on largemouth and smallmouth bass, shall extend upstream to the John Sevier Dam.
- H. Handicapped - any person who is mentally impaired or physically impaired (including blindness) because of injury or disease, congenital or acquired, which permanently renders him/her so severely disabled as to be unable to move without aid of crutches or a wheelchair, or a person who has 80% permanent impairment of a hand or arm as determined by a physician using the standards outlined in the "Guide to Evaluations of Permanent Rating", published by the AMA or other acceptable rating system.
- I. Bait - Any living or dead organism, or prepared substance designed to attract fish by taste or odor. For the purpose of this proclamation bait includes, but is not limited to, fish, fish eggs, crayfish, worms, grubs, crickets, corn, cheese, bread, pork rinds, putty or paste-type products, and flavors or scents applied to or impregnated into artificial lures.

#### **SECTION XVII. SHOOTING FISH AND TURTLES**

Shooting fish and turtles with firearms is prohibited.

#### **SECTION XVIII. SALE OF FISH AND TURTLES**

It is illegal to sell or offer for sale fish and turtles taken under authority of this proclamation.

#### **SECTION XIX. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 00-24, dated October 25, 2000, as amended in Proclamation 01-2, dated February 22, 2001.

Proclamation 01-17 received and recorded this 6th day of November, 2001. (11-14)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1680****PROCLAMATION 01-18****AMENDING PROCLAMATION 01-9****WILDLIFE MANAGEMENT AREAS HUNTING SEASONS, LIMITS AND MISCELLANEOUS REGULATIONS**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following amendments to Proclamation 01-9, wildlife management areas hunting seasons, limits and miscellaneous regulations:

1. Amend Section II, Wildlife Management Areas and Refuges - Season & Bag Limits, in the first paragraph under this section on page 3, by inserting "Cold Creek" in the list of WMAs and refuges between "Chickasaw" and "Cove Creek".
2. Amend Section II, Wildlife Management Areas and Refuges - Season & Bag Limits under Cheatham Lake on page 12:

Under "Waterfowl (Wheelchair-bound only blind site)," replace the statement "same as statewide seasons" with the following language:

Applications must be received by TWRA Region II by noon on the 4<sup>th</sup> Friday in October. Persons holding a permit for another blind are not eligible.

3. Amend Section II, Wildlife Management Areas and Refuges - Season & Bag Limits on page 36 under Oak Ridge, by deleting the entire paragraph pertaining to the Oak Ridge deer hunts and inserting the following language:

Due to national security concerns resulting from the September 11 tragedy, the federal government has cancelled the deer hunts previously scheduled on Oak Ridge WMA in 2001.

4. Amend Section II, Wildlife Management Areas and Refuges -Season & Bag Limits, in the list of WMAs and refuges being open to trapping as set out in the Statewide season on page 49 by inserting "Cold Creek" between "C.M. Gooch" and "Cordell Hull".

Proclamation No. 01-18 received and recorded this 5th day of November, 2001. (11-02)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1680****PROCLAMATION 01-19****AMENDING PROCLAMATION 01-8  
STATEWIDE BIG GAME HUNTING SEASONS AND BAG LIMIT  
(EXCLUSIVE OF WILDLIFE MANAGEMENT AREAS AND REFUGES)**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following amendments to Proclamation 01-8, statewide big game hunting seasons and bag limit (exclusive of wildlife management areas and refuges):

1. Amend Section III, Special Hunts, amending footnote 5 on page 4 that reads:

- <sup>5</sup> Holston Army Plant – two quota hunts on Nov. 17 and Nov. 18 (Hunter quota 80). Two quota hunts on Nov. 25 and Dec. 8 (Hunter quota 70). Bag limit 2 deer per permit.

and replace it with the following language:

- <sup>5</sup> Due to national security concerns resulting from the September 11 tragedy, the federal government has cancelled the deer hunts previously scheduled on the Holston Army Plant in 2001.

Proclamation No. 01-18 received and recorded this 5th day of November, 2001. (11-03)

**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1680****PROCLAMATION 01-20****PROCLAIMING COLD CREEK REFUGE**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, Section 70-1-206, the Tennessee Wildlife Resources Commission hereby proclaims the following area a wildlife refuge to be known as the Cold Creek Refuge:

Those lands and waters located in the Mississippi Alluvial Plain in Lauderdale County, being the area known as the Cold Creek Wetlands and purchased pursuant to the Wetlands Acquisition Act as posted. A more complete description may be found on file in the Tennessee Wildlife Resources Agency office, Nashville, Tennessee.

Proclamation No. 01-20 Received and recorded this 5th day of November, 2001. (11-04)



**TENNESSEE WILDLIFE RESOURCES COMMISSION - 1680****PROCLAMATION 01-21****PROCLAIMING ANDERSON TULLY WILDLIFE MANAGEMENT AREA**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-1-302 and 70-5-101, the Tennessee Wildlife Resources Commission hereby proclaims the following area to be known as Anderson Tully Wildlife Management Area:

Those lands owned by the Anderson Tully Company in Lauderdale County as posted and those lands owned by the Tennessee Wildlife Resources Agency as recorded in the Register's Office of Lauderdale County. A more complete description of said property may be found on file in the Tennessee Wildlife Resources Agency office, Nashville, Tennessee.

This proclamation repeals Proclamation 52 dated February 1, 1955. Urate and complete copy of a proclamation lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on the 25th day of October, 2001.

Proclamation No. 01-18 received and recorded this 5th day of November, 2001. (01-21)

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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 November 1, 2001 and ending November 30, 2001.*

  
RILEY C. DARNELL  
Secretary of State

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