

TAAAR



October 15, 2002
Volume 28, Number 10

RILEY C. DARNELL
Secretary of State

Division of Publications
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Department of State, Authorization No. 305197, 375 copies, October 2002. This public document was promulgated at a cost of \$ 7.09 per copy.

PREFACE

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

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

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

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

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

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

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

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

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

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DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 8.75 per cent.

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

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of November 2002 is 8.91 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 4.91 per cent.

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

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of September 2002. 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
09-01	Sept 4, 2002	0820 Board Of Examiners For Land Surveyors	Rulemaking Hearing Rules	Amendments	<i>Chapter 0820-1 Rules Of TN State Board Of Examiners For Land Surveyors</i> 0820-1-.05 Fees	Cecil H. Ross Staff Attorney Commerce And Insurance 312 8th Ave N TN Twr 25th Fl Nashville, TN 37243 (615) 741-3072	Nov 19, 2002
09-04	Sept 6, 2002	0240 Board Of Regents State University And Community College System Of Tennessee Austin Peay State University	Proposed Rules	Amendments	<i>Chapter 0240-3-1 Student Disciplinary Rules</i> 0240-3-1-.01 Institution Policy Statement 0240-3-1-.02 Disciplinary Offenses 0240-3-1-.03 Academic And Classroom Misconduct 0240-3-1-.05 Disciplinary Procedure	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN 37217 615-366-4438	January 28, 2002
09-06	Sept 6, 2002	0240 Board Of Regents State University And Community College System Of Tennessee Middle TN State University	Proposed Rules	Amendments	<i>Chapter 0240-3-4 Student Disciplinary Rules</i> 0240-3-4-.04 Disciplinary Procedures 0240-3-4-.06 Traffic And Parking Regulations 0240-3-4-.07 Registration Of Motor Vehicles <i>Chapter 0240-4-4 Student Housing Rules</i> 0240-4-4-.03 Residence Hall Conduct And Disciplinary Sanctions	Richard Jackson 1415 Murfreesboro Road Suite 350 Nashville, TN37217 615-366-4438	June 28, 2002
09-13	Sept 5, 2002	0470 Dietitian Nutritionist Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0470-1 General Rules And Regulations</i> 0470-1-.01 Definitions 0470-1-.05 Procedures For Licensure 0470-1-.09 Renewal Of License 0470-1-.15 Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment Of Costs, And Subpoenas	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave North, Nashville, TN 37247-0120 615-741-1611	Nov 19, 2002
09-14	Sept 5, 2002	0880 Board Of Medical Examiners	Rulemaking Hearing Rules	New Rule Amendments	<i>Chapter 0880-2 General Rules And Regulations Governing The Practice Of Medicine</i> 0880-2-.19 Continuing Medical Education 0880-2-.01 Definitions 0880-2-.07 Application Review, Approval, Denial, Interviews And	Robert J. Kraemer OGC TN Twr 312 8th Ave North, Nashville, TN 37247-0120, (615) 741-1611.	Nov 19, 2002

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-14, cont.					Conditioned, Restricted And Locum Tenens Licensure 0880-2-.09 Licensure Renewal 0880-2-.10 Licensure Retirement/Inactivation And Reactivation 0880-2-.11 Officers, Records, Meeting Requests, Certificates Of Fitness, Replacement Licenses, Consultants, Advisory Rulings, Declaratory Orders And Screening 0880-2-.12 Licensure Discipline And Civil Penalties 0880-2-.14 Scope Of Practice <i>Chapter 0880-4 General Rules And Regulations Governing The Practice Of Athletic Trainers</i> 0880-4-.01 Definitions 0880-4-.05 Licensure Process 0880-4-.09 Licensure Renewal, 0880-4-.15 Disciplinary Grounds, Actions, And Civil Penalties chapter <i>0880-5 General Rules And Regulations Governing The Utilization Of X-Ray Operators In Physician's Offices</i> 0880-5-.08 Maintaining Certification, Renewal, Retirement And Reinstatement		
09-15	Sept 13, 2002	0260 Chiropractic Examiners,	Rulemaking Hearing Rules	Amendments New Rule Amendments	<i>Chapter 0260-2 General Rules Governing Chiropractic Examiners</i> 0260-2-.01 Definitions 0260-2-.12 Continuing Education 0260-2-.10 Professional Peer Assistance <i>Chapter 0260-3 General Rules Governing Chiropractic X-Ray Technologists</i> 0260-3-.12 Continuing Education <i>Chapter 0260-5</i>	Tracey Boyers-Heathman OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 27, 2002

ANNOUNCEMENTS

SEQ. NO.	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER & RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-15, cont.					<i>General Rules Governing Chiropractic Therapy Assistants</i> 0260-5-.12 Continuing Education		
09-16	Sept 13, 2002	1045 Board Of Optometry	Rulemaking Hearing Rules	Amendments	<i>Chapter 1045-2 General Rules Governing The Practice Of Optometry</i> 1045-2-.01 Fees 1045-2-.03 Examinations 1045-2-.05 Continuing Education	Glen Watson OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 27, 2002
09-19	Sept 13, 2002	1200 Health Board For Licensing Health Care Facilities Division Of Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-25 Standards For Assisted-Care Living Facilities</i> 1200-8-25-.01 Definitions 1200-8-25-.05 Admissions, Discharges, And Transfers	John W. Dalton Health OGC 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-532-7179	Nov 27, 2002
09-20	Sept 13, 2002	0800 Labor And Workforce Development Division Of Workers' Compensation	Proposed Rules	Amendments	<i>Chapter 0800-2-15 Uninsured Employers Fund</i> 0800-2-15-.10 Representation At Show Cause Hearing	Peter B. Halverstadt Legal Counsel Labor And Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy. Nashville, TN 37243-0661 (615) 532-2403	Jan 28, 2002
09-21	Sept 13, 2002	0800 Labor And Workforce Development Division Of Occupational Safety And Health	Proposed Rules	Repeal and New Rules	<i>Chapter 0800-1-5 Safety And Health Provisions For The Public Sector</i> 0800-1-5-.01 Purpose And Scope 0800-1-5-.02 Definitions 0800-1-5-.03 Standards 0800-1-5-.04 Variances From Standards 0800-1-5-.05 Recording And Reporting Occupational Injuries And Illnesses 0800-1-5-.06 Designated Safety And Health Official 0800-1-5-.07 Posting Of Notice; Availability Of Act, Rules And Safety And Health Programs 0800-1-5-.08 Program Monitoring Inspections	Michael M. Maenza Labor And Workforce Development Occupational Safety And Health 3rd Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN 37243-0659 (615) 741-7036	Jan 28, 2002

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-21, cont.					0800-1-5-.09 Advance Notice Of Monitoring Inspections 0800-1-5-.10 Notice Of Unsafe Or Unhealthful Working Conditions And Inspection Reports 0800-1-5-.11 Posting Of Notice Of Unsafe Or Unhealthful Working Conditions 0800-1-5-.12 Correction Of Unsafe Or Unhealthful Working Conditions 0800-1-5-.13 Imminent Danger 0800-1-5-.14 Other Inspections 0800-1-5-.15 Employee Complaints 0800-1-5-.16 Discrimination Against Employees 0800-1-5-.17 Information On Toxic Materials Or Harmful Physical Agents 0800-1-5-.18 Action On Programs Determined To Be Less Effective Than As Required By The Act Amendments <i>Chapter 0800-1-6 Occupational Safety Standards for Construction</i> 0800-1-6-.02 Adoption and Citation of Federal Standards <i>Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture</i> 0800-1-7-.01 Adoption and Citation of Federal Standards 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928		
09-22	Sept 13, 2002	1200 Health Licensing Health Care Facilities Division Of Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-6 Standards For Nursing Homes</i> 1200-8-6-.06 Basic Services <i>Chapter 1200-8-26 Standards For Home Care Organizations Providing Home Health Services</i> 1200-8-26-.06 Basic Agency Functions	John W. Dalton Health OGC 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 27, 2002

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-22, cont.					<i>Chapter 1200-8-27 Standards For Home Care Organizations Providing Hospice Services 1200-8-27-.06 Basic Agency Functions</i>		
09-23	Sept 13, 2002	1365 Social Worker Certification And Licensure	Rulemaking Hearing Rules	Amendments	<i>Chapter 1365-1 General Rules And Regulations 1365-1-.05, Procedures For Certification And Licensure</i>	Robert Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 27, 2002
09-24	Sept 16, 2002	0080 Agriculture Division Of Regulatory Services	Emergency Rules	Amendments	<i>Chapter 0080-6-14 Pest Control Operators 0080-6-14-.04 License Categories Chapter 0080-6-16 Regulations Governing The Use Of Restricted Use Pesticides 0080-6-16-.03 Certification Requirements</i>	Patricia Clark General Counsel Department Of Agriculture P.O. Box 40627 Nashville, TN 37204 615-837-5093	Sept 16, 2002 Through Feb 28, 2003
09-27	Sept 17, 2002	0870 Massage Licensure Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 0870-1 General Rules Governing Licensed Massage Therapists And Establishments 0870-1-.04 Licensure And Provisional Licensure Process 0870-1-.06 Fees</i>	Robert Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Dec 1 , 2002
09-28	Sept 17, 2002	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendments	<i>Chapter 1050-2 General Rules And Regulations Governing The Practice Of Osteopathy 1050-2-.02 Fees Chapter 1050-3 General Rules And Regulations Governing Utilization Of X-Ray Operators In Osteopathic Physicians' Offices 1050-3-.06 Fees</i>	Robert Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Dec 1, 2002
09-29	Sept 17, 2002	1200 Health Board For Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-1 Standards For Hospitals 1200-8-1-.01 Definitions 1200-8-1-.05 Admissions, Discharges, And Transfers</i>	John W. Dalton Health OGC 26th Fl TN Twr 212 8th Ave N	Dec 1 , 2002

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-29, cont.		Division Of Health Care Facilities			1200-8-24-.01 Definitions <i>Chapter 1200-8-24 Standards For Birthing Centers</i> 1200-8-24-.05 Admissions, Discharges, And Transfers,		
09-31	Sept 18, 2002	0780 Commerce And Insurance Division Of Fire Prevention	Rulemaking Hearing Rules	Amendments	<i>Chapter 0780-2-3 Review Of Construction Plans And Specifications</i> 0780-2-3-.04 Fees	Robert H. Moss Staff Attorney Commerce And Insurance 312 8th Ave N TN Twr, 25th Fl Nashville, TN 37243 (615) 741- 3072	Dec 2 , 2002
09-32	Sept 24, 2002	1000 Nursing	Rulemaking Hearing Rules	Amendments	<i>Chapter 1000-1 Rules And Regulations Of Registered Nurses</i> 1000-1-.03 Biennial Registration (Renewal) 1000-1-.15 Scope Of Practice <i>Chapter 1000-2 Rules And Regulations Of Licensed Practical Nurses</i> 1000-2-.03 Biennial Registration (Renewal)	Nick Aemisegger Office Of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120 615-741-1611	Dec 8, 2002
09-34	Sept 26, 2002	0250 Children's Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 0250-7-9 Due Process Procedures For Release Of Child Abuse/Neglect Records</i> 0250-7-9-.01 Scope Of Rules 0250-7-9-.02 Classification Of Reports Of Child Abuse/Neglect As "Indicated" 0250-7-9-.03 When Rights Under This Chapter Attach; "Triggering Events" 0250-7-9-.04 Right To Notice And Opportunity For Hearing 0250-7-9-.05 Stay Of Administrative Proceedings 0250-7-9-.06 Conduct Of The Hearing 0250-7-9-.07 Evidence; Standard Of Proof 0250-7-9-.08 Alleged Perpetrators With Current Access To Children, Emergency Notification 0250-7-9-.09 Prohibited Releases	Stacy Miller DCS Central Legal Office TN Twrs 312 8th Ave N 25th Fl Nashville TN 37243	Dec 10, 2002

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-35	Sept 26, 2002	0880 Medical Examiners	Rulemaking Hearing Rules	Amendment	<i>Chapter 0880-2 General Rules And Regulations Governing The Practice Of Medicine</i> 0880-2-.14 Specifically Regulated Areas And Aspects Of Medical Practice	Robert J. Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 10, 2002
09-37	Sept 27, 2002	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0260-2 General Rules Governing Chiropractic Examiners</i> 0260-2-.01 Definitions 0260-2-.09 Renewal Of License 0260-2-.12 Continuing Education <i>Chapter 0260-3 General Rules Governing Chiropractic X-Ray Technologists</i> 0260-3-.01 Definitions 0260-3-.09 Renewal Of Certification 0260-3-.12 Continuing Education Chapter <i>0260-5 General Rules Governing Chiropractic Therapy Assistants</i> 0260-5-.01 Definitions 0260-5-.09 Renewal Of Certification 0260-5-.12 Continuing Education	Robert J. Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 11, 2002
09-46	Sept 30, 2002	1340 Safety Administrative Division	Proposed Rules	Amendments	<i>Chapter 1340-2-4 Handgun Carry Permit Procedures</i> 1340-2-4-.09 Renewal Of Handgun Carry Permit 1340-2-4-.12 Fees	Wanda Adams Assistant Director Handgun Carry Permit Division Department Of Safety 1150 Foster Ave Nashville, TN 37249-1000 615.251.5310	Jan 28, 2003
09-47	Sept 30, 2002	1680 Transportation Central Services Division	Proposed Rules	Amendments	<i>Chapter 1680-2-2 Overweight And Overdimensional Movements On TN Highways</i> 1680-2-2-.15 Conditions For Movement Of Manufactured Houses Or Portable Modular Units	John H. Reinbold, Sr. Deputy General Counsel Transportation Suite 700 James K. Polk Bldg 505 Deaderick St Nashville, TN 37243-0332 (615) 741-2941	Jan 28, 2003

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-48	Sept 30, 2002	1680 Transportation Central Services Division	Public Necessity Rules	Amendments	<i>Chapter 1680-2-2 Overweight And Overdimensional Movements On Tennessee Highways</i> 1680-2-2-.15 Conditions For Movement Of Manufactured Houses Or Portable Modular Units	John H. Reinbold, Sr. Deputy General Counsel Transportation Suite 700 James K. Polk Bldg 505 Deaderick St Nashville, TN 37243-0332 (615) 741-2941	Sept 30, 2002 through March 14, 2003
09-60	Sept 30, 2002	0620 Finance And Administration Bureau Of TennCare	Rulemaking Hearing Rules	New Chapter	<i>Chapter 1200-13-13 TennCare Medicaid</i>	George Woods Bureau Of TennCare 729 Church Street Nashville, TN 37247-6501 (615) 741-0145	Dec 14, 2002
09-61	Sept 30, 2002	0620 Finance And Administration Bureau Of TennCare	Rulemaking Hearing Rules	New Chapter	<i>Chapter 1200-13-14 TennCare Standard</i>	George Woods Bureau Of TennCare 729 Church Street Nashville, TN 37247-6501 (615) 741-0145	Dec 14, 2002
09-62	Sept 24, 2002	1680 Transportation Right-of-way, Utilities Section	Rulemaking Hearing Rules	Amendments	<i>Chapter 1680-6-1 Rules and Regulations for Accommodating Utilities Within highway Rights-of-Way</i> 1680-6-1 Appendices 1680-6-1-.09 Fiber Optic Cable Facilities Freeways 1680-6-1-.04 General Considerations 1680-6-1-.08 Processing of Use and Occupancy Agreement	John H. Reinbold, Sr. Deputy General Counsel Transportation Suite 700 James K. Polk Bldg 505 Deaderick St Nashville, TN 37243-0332 (615) 741-2941	Dec 8, 2002

ANNOUNCEMENTS

HEALTH SERVICES AND DEVELOPMENT AGENCY- 0720**NOTICE OF BEGINNING OF REVIEW CYCLE**

Applications will be heard at the November 12, 2002 Health Services and Development Agency 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 the review cycle effective September 1, 2002. The review cycle includes a 60-day period of review by the Tennessee Department of Health or the Department of Mental Health and Mental Retardation. Upon written request by interested parties the staff of The Health Services and Development Agency shall conduct a public hearing. *Certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a review less than 60 days including a 30-day period of review by the Department of Health or 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 68-11-1609(g)(1) effective May 2002, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Health Services and Development Agency and serve a copy on the contact person no later than fifteen (15) days before the agency meeting at which the application is originally scheduled.

For more information concerning each application you may contact the Health Services and Development Agency (615/741-2364).

NAME AND ADDRESS

DESCRIPTION

The Endoscopy Center of Smyrna
Chaney Road
Smyrna (Rutherford Co.), TN 37167
Faleecia Taylor – (616)—321-2141
CN0208-064

The establishment of a single specialty ambulatory surgical treatment center (ASTC) and the initiation of outpatient endoscopy surgery on Chaney Road in Smyrna, Tennessee. The ASTC will consist of five (5) procedure rooms, recovery room, nursing station, and ancillary space.
\$ 1,326,941.00

HAM Fentress County General Hospital
436 Central Avenue West
Jamestown (Fentress Co.), TN 38556
Bern Philipp – (931)—879-3305
CN0208-065

The addition of fourteen (14) acute care beds for a progressive care unit (PCU). This will be accomplished through the delicensing and conversion of fourteen (14) existing skilled nursing beds and discontinuation of that unit. If approved, HMA Fentress County Hospital will have an acute care licensed bed complement of eighty-five (85) and zero (0) SNF beds.
\$ 8,000.00

Fort Sanders Loudon Medical Center
1125 Grove Street
Loudon (Loudon Co.), TN 37774
Lee Ann Lambdin – (865)—380-2347
CN0208-067

The discontinuance of obstetric services.
\$ 5,000.00

NAME AND ADDRESS	DESCRIPTION
<p>The Endoscopy Center of Knoxville (North) Adjoins entrance @ 623 Emory Drive Knoxville (Knox Co.), TN 37909 John Wellborn – (615)—665-2022 CN0208-069</p>	<p>The establishment of a single specialty ambulatory surgical treatment center and the initiation of outpatient endoscopy surgery on the north side of East Emory Road in Knoxville, Tennessee. \$ 2,269,548.00</p>
<p>Applingwood Health Care Center 1536 Appling Care Lane Cordova (Shelby Co.), TN 38018 Donald B. Ross – (615)—377-9191 CN0208-070</p>	<p>The addition of fourteen (14) nursing home beds dually certified for Medicare/Medicaid” to the existing nursing home at 1536 Appling Care Lane, in Cordova, Tennessee. If approved, the facility would contain seventy-eight (78) licensed nursing home beds. \$ 49,000.00</p>
<p>St. Mary’s Emory Road Dannaheer Lane and Emory Road Knoxville (Knox Co.), TN 37849 Eli Matijevich – (423)—545-7895 CN0208-071</p>	<p>The establishment of an outpatient diagnostic imaging center (ODC) and ambulatory surgery treatment center limited to cancer treatment, and the initiation of magnetic resonance imaging (MRI) services and megavoltage radiation therapy services. The project will also include medical oncology, computed tomography (CT), ultrasound, nuclear medicine, and a comprehensive Breast Center. The proposed location of the project is on acreage at the intersection of Dannaheer Lane and Emory Road in Knoxville, Tennessee. \$ 19,203,590.00</p>
<p>Baptist Hospital of East Tennessee 137 Blount Avenue Knoxville (Knox Co.), TN 37920 John B. Sylvia – (865)—632-5166 CN0208-072</p>	<p>The initiation of extracorporeal shockwave lithotripsy services one (1) day per week on the second floor of the hospital at 137 Blount Avenue in Knoxville, Tennessee. \$ 135,600.00</p>
<p>CPS Innovations 810 Innovation Drive Knoxville (Knox Co.), TN 37932 W. Curtis Howe – (865)—218-2370 CN0208-073</p>	<p>The establishment of a test facility for CPS Innovations’ PET scanners using space leased from Covenant Health at Thompson Cancer Survival Center West, at 9711 Sherrill Lane in Knoxville, Tennessee. \$ 2,478,577.00</p>
<p>Maury Regional Hospital 1224 Trotwood Avenue Columbia (Maury Co.), TN 38401 William R. Walter – (931)—380-4001 CN0208-074</p>	<p>The initiation of open-heart surgery services at Maury Regional Hospital at 1224 Trotwood Avenue in Columbia, Tennessee. \$ 1,885,250.00</p>

NAME AND ADDRESS	DESCRIPTION
Hospice of West Tennessee 420 Cheyenne Trace Drive Jackson (Madison Co.), TN 38305 Victoria S. Lake – (731)—660-8735 CN0208-075	The initiation of a fifteen (15) bed residential hospice service in a wing of Cheyenne Trace Assisted Living Facility at 420 Cheyenne Drive in Jackson, Tennessee. \$ 314,670.00
Tennessee Orthopaedic Alliance, P.A. 1010 North Highland Avenue Murfreesboro (Rutherford Co.), TN 37130 Jerry W. Taylor – (615)—726-1200 CN0208-076	The initiation of in-office magnetic resonance imaging (MRI) services at 1010 North Highland Avenue in Murfreesboro, Tennessee. \$ 1,719,925.00
MaxLife @ Home of Tennessee, LLC 119 Frank Boyd Street, Box 416 Waynesboro (Wayne Co.), TN 38485 Dr. Raj Kaushal – (615)—263-3758 CN0208-077	The addition of seven (7) counties to the existing service area to include Cheatham, Davidson, Robertson, Rutherford, Sumner, Williamson, and Wilson to the existing eleven (11) counties of Decatur, Giles, Hardin, Hickman, Humphreys, Lawrence, Lewis, Maury, McNairy, Perry and Wayne. This project will also relocate the parent office of the home health agency from 110 Frank Boyd Street in Waynesboro (Wayne County), TN to 2907 Cayce Lane in Columbia (Maury County), TN. If approved, MaxLife @ Home, LLC, 2120 Crestmoor Road, Suite 2004, Nashville (Davidson county), TN 37215 will discontinue home health services and surrender its license to provide services in the seven (7) county area. \$ 128,800.00
West Tennessee Bone and Joint Clinic 24 Physicians Drive Jackson (Madison Co.), TN 38305 John Wellborn – (615)—665-2022 CN0208-078	The initiation of mobile magnetic imaging services two days per week. This service will be provided at 24 Physicians Drive in Jackson, Tennessee. \$ 644,200.00
Pain Management Ambulatory Surgery Center 108 Woodlawn Avenue Johnson City (Washington Co.), TN 37604 Connie Stufflestreet – (423)—232-6120 CN0208-079	The establishment of an ambulatory surgical treatment center limited to pain management in Med-Tech Park at the junction of Franklin and Knob Creek Boulevard n Johnson City, Tennessee. The project will consist of a 2,500 SF facility with two (2) operating rooms. \$ 1,072,500.00

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency Rules promulgated in response to the threat of Chronic Wasting Disease introduction into the State of Tennessee, chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 5 T.A.R. (May 15, 2002). Filed April 15, 2002; effective through September 27, 2002. (04-16)

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency Rules relating to the aerial application of pesticides and the persons licensed as aerial pesticide applicators, Chapter 0080-6-15 Rules and Regulations Governing Commercial Aerial Applicators of Pesticides, 6 T.A.R. (June, 2002). Filed June 28, 2002; effective through December 10, 2002. (06-38)

- 1200 - Department of Health - Board for Licensing Health Care Facilities and 0620 - Department of Finance and administration - Bureau of TennCare - Emergency rules dealing with special care units for ambulatory residents with dementia or Alzheimer's Disease and related disorders, chapters 1200-8-5 Behavioral Health Units in Nursing Facilities and Chapter 1200-13-1 General Rules, 8 T.A.R. (August 2002). Filed July 5, 2002; effective through December 17, 2002. (07-05)

- 1240 - Department of Human Services - Adult and family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-1 Standards for group Day Care Homes, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through February 2, 2003. (08-30)

- 1240 - Department of Human Services - Adult and Family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through February 2, 2003. (08-28)

- 1240 - Department of Human Services - Adult and Family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-4 Standards for Family Day Care Homes, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through February 2, 2003. (08-29)

- 1240 - Department of Human Services - Adult and Family Services Division - Emergency rules dealing with the manner in which children being cared for in child care agencies are transported, chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children, 9 T.A.R. (September 2002) - Filed August 21, 2002; effective through November 4, 2002. (08-29)

- 1660 - Wildlife Resources Commission - Boating Division - Emergency rules regarding waterway zoning on Dale Hollow Lake, chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels, 6 T.A.R. (June, 2002). Filed June 6, 2002; effective through November 18, 2002. (06-01)

**DEPARTMENT OF AGRICULTURE – 0080
DIVISION OF REGULATORY SERVICES**

**CHAPTER 0080-6-14
PEST CONTROL OPERATORS**

**CHAPTER 0080-6-16
REGULATIONS GOVERNING THE USE OF
RESTRICTED USE PESTICIDES**

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to Tenn. Code Ann. § 4-5-208, the Tennessee Department of Agriculture’s Regulatory Services Division, Pesticides Section, is promulgating the following emergency rule regarding persons licensed as pesticide applicators and to create a new license category called “Public Health Pest Control” to deal with the heightened pest control concerns related to the West Nile Virus.

Many areas of Tennessee do not have county or municipal mosquito control programs. Tennessee Pest Control Operators are reluctant to spray for mosquitoes that carry the West Nile Virus because the State of Tennessee has no pesticide license category that specifically tests for or authorizes the commercial application of pesticides for the control of mosquitoes. Creation of a “Public Health Pest Control” licensure category and the implementation of a Public Health Pest Control examination will authorize pest control operators who attain this license to spray for mosquitoes as needed.

The Tennessee Department of Agriculture, after consultation with the Center for Disease Control, United States Department of Agriculture, and the Tennessee Department of Health, has determined that the West Nile Virus poses an immediate threat to human and animal health and to the economic interests of Tennessee and that the immediate control of mosquitoes which carry this virus and the elimination of their breeding grounds necessitates the implementation of the following emergency rules.

For copies of the entire text of the proposed amendment contact Kathy Booker, Pesticide Administrator, Regulatory Services Division, Department of Agriculture, P. O. Box 40627, Nashville, Tennessee, 37204, 615-837-5133.

John W. Rose, Commissioner
Tennessee Department of Agriculture

**CHAPTER 0080-6-14
PEST CONTROL OPERATORS**

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AMENDMENT

Rule 0080-6-14-.04 License Categories is amended by adding the following new paragraph (14) to create the Public Health Control license category.

- (14) Public Health Pest Control – Control and management of all stages of mosquitoes and other pests having medical and public health importance.

Authority: T.C.A. §62-21-118.

**CHAPTER 0080-6-16
REGULATIONS GOVERNING THE USE OF
RESTRICTED USE PESTICIDES**

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0080-6-16-.03 Certification Requirements

AMENDMENT

Rule 0080-6-16-.03(4)(h) Public Health Pest Control, is amended by deleting the current language of Part 1. in its entirety and substituting in lieu thereof the following language so that as amended the new Part 1 shall read:

1. Description – This category includes all governmental employees and commercial applicators who use or supervise the use of pesticides in public health programs or in the commercial application of pesticides for the management and control of pests having medical and public health importance.

Authority: T.C.A.. §§ 43-8-106 and 62-21-118

The emergency rules set out herein were properly filed in the Department of State on the 16th day of September, 2002, and will be effective from the date of filing for a period of 165days. These emergency rules will remain in effect through the day 28th day of February, 2003. (09-24)

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PROPOSED RULES

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

CHAPTER 0800-1-5 SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR

Presented herein are proposed rules, amendments and repeals of the Department of Labor and Workforce Development, Division of Occupational Safety and Health submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these rules 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, amendments and repeals are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 26th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0293, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules, 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: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3rd Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

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

NEW RULES

TABLE OF CONTENTS

0800-1-5-.01	Purpose and Scope	0800-1-5-.10	Notice of Unsafe or Unhealthful Working Conditions and Inspection Reports
0800-1-5-.02	Definitions	0800-1-5-.11	Posting of Notice of Unsafe or Unhealthful Working Conditions
0800-1-5-.03	Standards	0800-1-5-.12	Correction of Unsafe or Unhealthful Working Conditions
0800-1-5-.04	Variances from Standards	0800-1-5-.13	Imminent Danger
0800-1-5-.05	Recording and Reporting Occupational Injuries and Illnesses	0800-1-5-.14	Other Inspections
0800-1-5-.06	Designated Safety and Health Official	0800-1-5-.15	Employee Complaints
0800-1-5-.07	Posting of Notice; Availability of Act, Rules and Safety and Health Programs	0800-1-5-.16	Discrimination Against Employees
0800-1-5-.08	Program Monitoring Inspections	0800-1-5-.17	Information on Toxic Materials or Harmful Physical Agents
0800-1-5-.09	Advance Notice of Monitoring Inspections	0800-1-5-.18	Action on Programs Determined to be Less Effective Than As Required by the Act

0800-1-5-.01 PURPOSE AND SCOPE. The primary purpose of the Tennessee Occupational Safety and Health Act of 1972, as amended, T.C.A. §§50-3-101 through 50-3-919 is to assure so far as possible every working man and woman in the State of Tennessee safe and healthful working conditions and to preserve our human resources. This purpose is specifically extended to public sector employees through Section 19 of the Act (T.C.A. §§50-3-906 through 50-3-913). The purpose of this chapter is to implement the provisions of the Act applicable in the public sector by setting forth general policies and prescribing rules to effectuate the provisions of the Act.

Authority: T.C.A. §§4-3-1411, 50-3-101, 50-3-102, 50-3-201 and 50-3-906 through 50-3-913.

0800-1-5-.02 DEFINITIONS.

- (1) "Employer" as used in this chapter means:
 - (a) The State of Tennessee including constitutional offices, administrative departments, commissions, boards, divisions and any other agency of the state.
 - (b) County, metropolitan and municipal governments and all departments, commissions, boards, divisions, and any other agency of the county, metropolitan or municipal government which has elected to develop its own program of occupational safety and health compliance under the provisions of T.C.A. §50-3-910.
- (2) "Employee" as used in this chapter means any person performing services for an employer as defined in Rule 0800-1-5-.02(1)(a) or (b) above under an appointment or contract of hire, including minors and persons performing such services on a part time or seasonal as well as a full time basis.
- (3) "Establishment" means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single location, each activity shall be treated as a separate establishment.
- (4) "Local Government" means a county, metropolitan or municipal government and includes constitutional or charter and administrative offices, departments, boards, commissions, divisions or other agency of the county, metropolitan or municipal government.
- (5) "Monitoring Inspection" means a walkaround inspection of the workplace and an evaluation of self-compliance programs carried out by the Commissioner to ensure that public sector employers are carrying out their duties or fulfilling their responsibilities under the Act.
- (6) "Notice of Unsafe or Unhealthful Working Conditions (Notice)" means the official document used by the Division of Occupational Safety and Health to transmit notification to public sector employers of violations of the Act or unsafe conditions that indicate a deficiency or deviation from the state agency's or local government's occupational safety and health program.
- (7) "Public Sector" means a unit of government, state or local, which is an employer as defined in Rule 0800-1-5-.02(1)(a) or (b) above. It does not include those local governments which have elected to be treated as a private employer or those considered to have elected to be treated as a private employer under the provisions of T.C.A. § 50-3-910.
- (8) "Safety and Health Official" as used in this chapter means the individual who is responsible for the management of the safety and health program within his or her state agency or local government. Although the chief executive

officer of the state agency or local government bears the ultimate responsibility, he or she may delegate it to the safety and health official.

- (9) "State Agency" means any constitutional office, administrative department, commission, board, division or other unit of state government.
- (10) "Variance" means an alternate practice, mean, method, operation, or process to that prescribed by a standard which provides protection from the occupational safety or health hazard which is as effective as that required by the standard, or a program of coming into compliance with the standard.

Authority: T.C.A. §§4-3-1411, 50-3-101, 50-3-102, 50-3-103, 50-3-201, 50-3-601 through 50-3-606, 50-3-906, and 50-3-910.

0800-1-5-.03 STANDARDS. Employers and employees shall comply with all occupational safety and health standards promulgated by the Commissioner under the rules in Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry, Chapter 0800-1-6 Occupational Safety and Health Standards for Construction, and Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture. Employers may develop and promulgate standards on issues not covered by the standards promulgated by the Commissioner, and a copy of such locally developed and promulgated standards shall be provided to the Commissioner.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-906, and 50-3-910.

0800-1-5-.04 VARIANCES FROM STANDARDS. Employers may seek a variance from any occupational safety or health standard promulgated by the Commissioner. Any request for a variance shall be in accordance with the rules in Chapter 0800-1-2 Variances from Occupational Safety and Health Standards.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-601 through 50-3-606.

0800-1-5-.05 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES.

- (1) All employers are required to keep and maintain occupational safety and health injury and illness records as required by the rules in Chapter 0800-1-3 Occupational Safety and Health Record-Keeping and Reporting. The partial exemptions in Rule 0800-1-3-.02(2) and Rule 0800-1-3-.02(3) do not apply in the public sector.
- (2) Under T.C.A. § 50-3-910, local governments which elect to develop their own program of self compliance must include in their written notification of such program with the Commissioner an assurance that the program includes provisions for recordkeeping as effective as the provision of T.C.A. § 50-3-701. Such recordkeeping provisions shall comply with Chapter 0800-1-3 Occupational Safety and Health Record-Keeping and Reporting.
- (3) Any request for a variance to the provisions of Rule 0800-1-5-.05(1) based on form, content, etc. shall be addressed to the Commissioner. Should the Commissioner determine that a variance is warranted, he shall request that the employer seeking the variance submit a petition through the Office of the Commissioner to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210. Any final determination on the granting of the variance within the public sector by the Commissioner shall be based upon the determination of the Assistant Secretary of Labor regarding such petition.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-701, 50-3-906, 50-3-910, and 50-3-917.

0800-1-5-.06 DESIGNATED SAFETY AND HEALTH OFFICIAL.

- (1) A memorandum from the Governor of the State of Tennessee to All Agency and Department Heads dated September 27, 1972, requests each agency and department head to designate a staff member to serve as the administrator of each department's or agency's safety and health program. Item 1 under Guidelines to be Used for Approval and Evaluation of Self-Compliance Programs contained in Chapter IV, Part IV, Public Sector, Tennessee Occupational Safety and Health Plan requires local governments to indicate the official responsible for the local government's occupational safety and health program. The Act invests responsibility for carrying out its objectives with the Commissioner on a statewide level, and it is recognized that the chief executive officer bears the responsibility for carrying out the objectives of the Act within his jurisdiction. It is the considered judgement of the Commissioner that in most instances within the public sector, the chief executive officer of the state agency or local government should designate or appoint an official to be responsible for the management and administration of the state agency's or local government's occupational safety and health program. It is also the considered judgement of the Commissioner that such official should have, or have personnel reporting to him who have, necessary training and experience to carry out his functions. If the employer has less than 750 employees, the responsible official should devote up to fifty percent (50%) of his time to the safety and health program; if 750 to 999 employees at least fifty percent (50%); if 1,000 to 1,999 employees at least seventy-five percent (75%); and if 2,000 or more employees all of his time to the program.
- (2) The designated safety and health official should assist the chief executive officer of the state agency or local government in carrying out all facets of the program to include, but not be limited to, the following:
 - (a) Setting goals and objectives for reducing and eliminating occupational accidents, injuries and illnesses;
 - (b) Developing plans and procedures for evaluating the program's effectiveness at all operational levels;
 - (c) Setting priorities with respect to the factors which cause occupational accidents, injuries and illnesses so that appropriate corrective action can be taken; and
 - (d) Assisting in budgeting sufficient funds for necessary staff, equipment, material and training required to ensure an effective occupational safety and health program.
- (3) Employers shall provide the Commissioner with the designated safety and health official's name, business address and telephone number, and position title if designated on a part-time basis. The Commissioner shall be advised of any change of the official so designated within thirty (30) days after such change occurs.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-906 through 50-3-911, and 50-3-913.

0800-1-5-.07 POSTING OF NOTICE; AVAILABILITY OF ACT, RULES, AND SAFETY AND HEALTH PROGRAMS.

- (1) Employers shall post and keep posted a notice or notices, provided by the Tennessee Department of Labor and Workforce Development, informing employees of the protections and obligations afforded under the Act and the state agency's or local government's occupational safety and health program. Such notice or notices shall be posted in each establishment in a conspicuous place or places where notices to employees are customarily posted. Employers shall take steps to insure that all such notice or notices are not altered, defaced or covered by other material. For assistance and information, including copies of the Act, rules, specific occupational safety and health standards, and state agency or local government programs, employees should contact their designated safety and health official or the Administrator, Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development.

- (2) Where distinctly separate activities are performed at a single physical location, each activity shall be considered as a separate physical establishment, and a separate notice or notices shall be posted at each such establishment. Where employees are engaged in activities which are physically dispersed, such as electric, gas and sanitary services or highway maintenance, the notice or notices required by this rule shall be posted in accordance with the provisions of paragraph (1) of this rule.
- (3) Copies of the Act, rules and all applicable standards will be available in the area offices of the Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or authorized representative(s) of employees for review. The review should occur in the establishment where the program or materials are maintained on file on the same day the request is made, or at the earliest possible time mutually convenient to the employee or the authorized representative(s) of employees and the employer.
- (4) Employers shall make available upon request to any employee or authorized representative(s) of employees a copy of the state agency's or local government's occupational safety and health program for review. The review should occur in the establishment where the program is maintained on file on the same day the request is made, or at the earliest possible time mutually convenient to the employee or the authorized representative(s) of employees and the employer.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-915.

0800-1-5-.08 PROGRAM MONITORING INSPECTIONS.

- (1) Authority for Program Monitoring Inspections. T.C.A. §§50-3-906 and 50-3-911 provide authority for the Commissioner to conduct inspections under T.C.A. §50-3-301.
- (2) Right of Entry. T.C.A. §50-3-301 states, "In order to carry out the purposes of this chapter, the Commissioner of Labor and Workforce Development, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized to:
 - (a) Enter without delay and at any reasonable time any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and
 - (b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment and materials therein, and question privately any such employer, owner, operator, agent or employee." In accordance with Rule 0800-1-3-.05(2) of Chapter 0800-1-3, the Commissioner is authorized to review records required by the Act.
- (3) Conduct of Inspections. The Commissioner has delegated authority to conduct monitoring inspections of state agency and local government occupational safety and health programs to occupational safety specialists, industrial hygienists, and environmental engineers of the Public Sector Section, Division of Occupational Safety and Health, herein referred to as public sector safety and health officers (PSSHOs). Monitoring inspections shall be conducted by PSSHOs in accordance with the following:
 - (a) Subject to the provisions of paragraph (2) of this rule, monitoring inspections shall take place at such times and in such places of employment as the Commissioner may direct. Monitoring inspections of each employer will be conducted at least biennially and shall cover, at a minimum, inspection of at least one (1) workplace in at least two (2) departments or establishments. At the beginning of a monitoring inspection, the PSSHO shall present his credentials to the chief executive officer, the designated safety

and health official, or the agent in charge at the establishment; explain the nature, purpose, and scope of the inspection and the records to be reviewed.

- (b) PSSHOs shall have authority to take environmental samples, take or obtain photographs, employ other reasonable investigative techniques, and question privately any employer, agent or employee of an establishment. As used herein, the term “employ other reasonable investigative techniques” includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.
 - (c) In taking photographs and samples, the PSSHOs shall take reasonable precautions to insure that such actions with flash, spark-producing or other equipment will not be hazardous. PSSHOs shall comply with all employer safety and health rules and practices at the establishment, and they shall wear and use appropriate protective clothing and equipment.
 - (d) The conduct of monitoring inspections shall be such as to preclude unreasonable disruption of the operations of the employer’s establishment.
 - (e) At the conclusion of a monitoring inspection, the PSSHO shall confer with the chief executive officer, the designated safety and health official, or a representative of either or both, and informally advise him of any apparent safety or health violations discovered during the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the PSSHO any pertinent information regarding conditions in the workplace.
- (4) Representatives of Employers and Employees.
- (a) PSSHOs shall be in charge of monitoring inspections and questioning of persons. A representative of the employer and an authorized representative of employees shall be given an opportunity to accompany the PSSHO during the physical inspection of any workplace for the purpose of aiding such inspection. A PSSHO may permit additional employer representatives and additional authorized representatives of employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and/or employee representative may accompany the PSSHO during each different phase of an inspection if this will not interfere with the conduct of the inspection.
 - (b) Normally the designated safety and health official will be the representative of the employer. The PSSHO shall have authority, however, to resolve all disputes as to who is the authorized representative of the employer and employees for the purposes of this rule. If there is no authorized representative(s) of employees or if the PSSHO is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
 - (c) PSSHOs are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.
- (5) Consultation with Employees. PSSHOs may consult with employees concerning matters of occupational safety and health to the extent they deem necessary to conduct an effective and thorough inspection. During the course of a monitoring inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the PSSHO.
- (6) Objection to Inspection. Upon a refusal to permit a PSSHO to inspect, review records, or permit a representative of employees to accompany the PSSHO during the physical inspection of any workplace, the PSSHO shall terminate

the inspection or confine the inspection to areas in which no objection is raised. The PSSHO shall immediately report such refusal and the reason(s) therefor to the Manager of Public Sector Operations, Administrator, and/or the Commissioner. Should entry be denied, the Manager of Public Sector Operations will report to the Administrator and Commissioner who may then proceed under the provisions of Rule 0800-1-5-.18.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-301 through 50-3-306, 50-3-906, and 50-3-911.

0800-1-5-.09 ADVANCE NOTICE OF MONITORING INSPECTIONS.

- (1) In accordance with T.C.A. §50-3-306, advance notice of inspections may not be given except as authorized by the Commissioner when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with the rules issued by him.
 - (a) Advance notice may be given in the following situations:
 1. In cases of apparent imminent danger to enable the employer to abate the danger as quickly as possible;
 2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
 3. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
 4. In other circumstances where the Commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
 - (b) When advance notice as authorized by the Commissioner is given, it shall be the employer's responsibility to promptly notify the authorized representative(s) of employees, if any and if known to the employer, of the inspection. The employer may, however, request that the PSSHO inform the authorized representative(s) of employees of the inspection. Advance notice shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-306.

0800-1-5-.10 NOTICE OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS AND INSPECTION REPORTS.

- (1) The Commissioner has delegated authority for review of monitoring inspections by PSSHOs to the Manager of Public Sector Operations, Division of Occupational Safety and Health. If, on the basis of the PSSHO's report, the Manager of Public Sector Operations believes that the employer has violated a provision of the Act, any standard, or rule as may be applicable, he shall issue to the employer a Notice of Unsafe or Unhealthful Working Conditions (notice) for such violation. A notice shall be issued even though after being informed of an alleged violation by the PSSHO, the employer immediately abates, or initiates steps to abate, such alleged violation. Any notice shall be issued with reasonable promptness and in no event later than six (6) months following the monitoring inspection.
- (2) Any notice shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, regulation or order alleged to have been violated. Any notice shall also fix a reasonable time or times for the abatement of the alleged violation.

- (3) If a notice is issued for a violation alleged in a request for inspection under Rule 0800-1-5-.15 or a notification of violation under Rule 0800-1-5-.08(5), a copy of the notice shall also be sent to the employee(s) or authorized representative(s) of employees who made such request or notification.
- (4) Employer and Employee Objections to Notice. Any employer, employee or authorized representative(s) of employees of an employer to whom a notice has been issued may file a written declaration with the Commissioner advising him of objections to the terms or conditions of the notice. Employers, employees or authorized representative(s) of employees must file such declaration within twenty (20) days of receipt by the employer of the notice.
- (5) Notice, if any, and a report of findings concerning the general effectiveness of the employer's occupational safety and health program shall be sent to the employer following a monitoring inspection by the Manager of Public Sector Operations. If no alleged violations were found during the monitoring inspection which would be subject to the issuance of a notice in accordance with the provisions of paragraphs (1) through (3) of this rule, the report shall so state. Any report shall be issued with reasonable promptness and in no event later than six (6) months following the monitoring inspection.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-304, 50-3-907, 50-3-908, and 50-3-912.

0800-1-5-.11 POSTING OF NOTICE OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS.

- (1) Upon receipt of any notice, the employer shall post such notice or a copy thereof, unedited, at or near each place of an alleged violation except as provided below. Posting of the notice or a copy shall be accomplished within one (1) working day following receipt. Where, because of the nature of the employer's operations, it is not practicable to post the notice at or near each place of alleged violation, such notice shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. The employer shall take steps to insure that the notice is not altered, defaced, or covered by other material. Reports under the provisions of Rule 0800-1-5-.10(5) need not be posted.
- (2) Each notice or a copy thereof shall remain posted until the violation has been abated or for three (3) working days, whichever is later.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-906 through 50-3-913.

0800-1-5-.12 CORRECTION OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS.

- (1) It is the responsibility of the employer to correct unsafe or unhealthful working conditions for which he has been notified within the abatement period specified on the notice for each violation. Factors such as budget limitations shall be taken into consideration by the Commissioner when setting abatement dates.
- (2) If a follow-up inspection discloses that an employer has failed to correct an alleged violation within the abatement period permitted for its correction, the PSSHO shall ascertain why compliance has not been achieved. If this cannot be accomplished, he shall contact the Manager of Public Sector Operations or Administrator. The Manager of Public Sector Operations, Administrator, and/or Commissioner shall communicate with the chief executive officer of the state agency or local government who in turn will attempt to attain compliance. If deemed appropriate by the Commissioner, the program will be determined to be less effective than as required by the Act and the provisions of Rule 0800-1-5-.18 shall be implemented.
- (3) Whenever an employer has made a good faith effort and abatement has not been completed because of factors beyond his reasonable control, such employer may submit a petition requesting in writing an extension of the

abatement date as set forth in the notice or in a prior extension. The petition for modification of abatement date shall include the following information:

- (a) Identification of the violation and the item(s) listed thereon to which a change in abatement date is requested.
 - (b) All steps taken by the employer and the date of such action in an effort to achieve compliance during the prescribed abatement period for all violations.
 - (c) The specific additional abatement time necessary in order to achieve compliance.
 - (d) The reason(s) additional time is necessary.
 - (e) All available interim protective measures that have been taken to safeguard employees against the hazard(s) identified during the abatement period and the date of such action.
 - (f) A certification that a copy of the petition for modification of abatement date has been posted and, if appropriate, served on the authorized representative(s) of affected employees in accordance with subparagraph (a) of paragraph (4) of this rule, and a certification of the date upon which such posting and service was made.
- (4) A petition for modification of abatement date shall be filed with the Manager of Public Sector Operations no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.
- (a) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of twenty (20) calendar days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
 - (b) Affected employees or their authorized representative(s) may file an objection in writing to such petition with the Manager of Public Sector Operations. Failure to file such objection within twenty (20) calendar days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.
 - (c) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date.
- (5) Whenever abatement periods specified in the notice exceed thirty (30) days, the Commissioner may require the employer to provide interim protection for employees from the hazard(s) noted such as administrative controls, use of personal protective equipment, etc. When such interim protection is required, the notice shall so state. Whenever abatement periods specified in the notice exceed ninety (90) days, employers may be requested to submit reports of progress toward achieving abatement as a means of assuring continuing program effectiveness. Employers shall comply with any such progress reports requested by the Commissioner.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-907, 50-3-908, and 50-3-912.

0800-1-5-.13 IMMINENT DANGER. Whenever and as soon as a PSSHO concludes that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and the employer of danger and request that the employer take immediate action to abate such danger. Appropriate notice may be issued with respect to an imminent danger even though the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger. In the event the employer does not take immediate action to abate such danger, the PSSHO shall immediately inform the Commissioner. The Commissioner may obtain compulsory process in an effort to obtain immediate abatement or action as authorized by T.C.A. §50-3-918.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, and 50-3-918.

0800-1-5-.14 OTHER INSPECTIONS. Under the provisions of the Act, the Commissioner may make additional inspections as he deems appropriate whenever there is a fatality, catastrophe, employee complaint, or discrimination complaint. Inspections in these categories shall be conducted in accordance with this chapter and a notice may be issued, if appropriate.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, 50-3-906, and 50-3-911.

0800-1-5-.15 EMPLOYEE COMPLAINTS.

- (1) Under the provisions of T.C.A. §§50-3-106 and 50-3-304, any employee or authorized representative(s) of employees may submit a complaint concerning occupational safety and health conditions in his or her workplace. Within the public sector, employees should submit complaints or request inspections in accordance with procedures set forth in their employer's occupational safety and health program.
- (2) Employees who have complained to their employer who feel that the action taken to satisfy their complaint was not appropriate, or who feel that their employer's occupational safety and health program is no longer effective can submit a complaint to or request an inspection from the Division of Occupational Safety and Health, Tennessee Department of Labor and Workforce Development. Such complaint or request for inspection shall be in writing and shall set forth with reasonable particularity the grounds for the complaint or inspection request. The complaint or inspection request should be signed and the name of the person signing the complaint or request shall be withheld from the employer if such desire is indicated in the complaint or inspection request.
- (3) If the Manager of Public Sector Operations determines that an employee complaint or inspection request meets the requirements set forth in paragraphs (1) and (2) of this rule, and there are reasonable grounds to believe that the complaint or inspection request is valid, he shall cause an inspection to be made. The inspection shall be conducted by a PSSHO, as soon as practicable, to determine if program deficiencies exist. Inspections under this rule shall not be limited to matters referred to in the complaint or inspection request.
- (4) If the Manager of Public Sector Operations determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation of the Act, any standard, rule or danger exists, he shall notify the complaining or requesting party, if known, in writing of such determination. If the complaining or requesting party is dissatisfied with such determination, he may resubmit his complaint or inspection request without prejudice to the Commissioner. Any decision of the Commissioner regarding the complaint or inspection request resubmission shall be final and not subject to further review.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, 50-3-304, and 50-3-906.

0800-1-5-.16 DISCRIMINATION AGAINST EMPLOYEES.

- (1) Part IV of the Tennessee Occupational Safety and Health Plan and T.C.A. §§ 50-3-106(7), 50-3-106(8), and 50-3-409 prohibit discriminatory action by an employer toward an employee who has exercised his rights under the Act. In addition to filing a complaint alleging discrimination with the Commissioner, employees have the option of (1) filing a grievance in accordance with the grievance procedures of the Tennessee Department of Personnel if a state employee, or (2) filing a complaint alleging discrimination in accordance with the procedures in the local government's program if a local government employee. In order to be assured the rights and protection afforded by T.C.A. §50-3-409, however, employees must file a complaint in accordance with the provisions of the code.
- (2) When employees utilize local procedures in an attempt to settle alleged discrimination, they should include a statement of such fact in the complaint filed with the Commissioner. The Commissioner shall conduct an investigation of such complaint as required by T.C.A. §50-3-409. The Commissioner shall notify the complainant of his determination as required by T.C.A. §50-3-409 but may delay filing any action in chancery court pending resolution of local procedures. In no event shall the Commissioner delay such filing beyond one (1) year from the date of the alleged discrimination.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, and 50-3-409.

0800-1-5-.17 INFORMATION ON TOXIC MATERIALS OR HARMFUL PHYSICAL AGENTS. Employers shall notify any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard. If medical examinations or other tests are required by applicable standards, the employer shall make such examinations or tests available or at his expense to determine whether the health of such employee is adversely affected by such exposure pursuant to the provisions of T.C.A. §§50-3-106(5) and 50-3-203.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-106, 50-3-201, and 50-3-203.

0800-1-5-.18 ACTION ON PROGRAMS DETERMINED TO BE LESS EFFECTIVE THAN AS REQUIRED BY THE ACT.

- (1) Whenever the Commissioner, as a result of inspections or other activity conducted under the provisions of any rule of this chapter, determines that an employer's occupational safety and health program is less effective than as required by T.C.A. §50-3-906 in the case of state agencies, or T.C.A. §50-3-910 in the case of local governments electing to develop their own program of compliance he shall:
 - (a) In the case of state agencies:
 1. Issue the chief executive officer of the agency a written notification stating in what respects the agency has not adequately met its responsibilities, and provide a period of twenty (20) days for the agency to respond by establishing procedures to attain an "at least as effective as" status or contesting the notification.
 2. When an agency responds to the Commissioner's notification by establishing procedures to attain an "at least as effective as" status, such procedures shall be in detail and include dates for accomplishment of each item required.
 3. If an agency does not advise the Commissioner within twenty (20) days of its intention to contest such notification, the Commissioner shall submit a copy of such notification to the governor, together with a

request that such action be taken as will bring such agency into compliance with the provisions of the Act.

4. If, within twenty (20) days of receipt of notification, the agency advises the Commissioner of its intention to contest the notification, the Commissioner shall promptly notify the commission, which shall afford opportunity for a hearing and shall thereafter issue to the governor its findings of fact and recommendations for action.

(b) In the case of local governments:

1. Issue the chief executive officer of the local government written notification by certified mail stating in what respects the local government has not met its duty to provide its employees with conditions of employment consistent with the objectives of the Act, and request a response within twenty (20) days of receipt of the notification which states procedures and dates to attain an "at least as effective as" status.
2. Should the local government not respond to the Commissioner's letter of notification within the twenty (20) day period prescribed, the Manager of Public Sector Operations, Administrator, or the Commissioner shall contact the chief executive officer of the local government by telephone or in person in an attempt to ascertain what the local government's response will be. Such contact shall be made within twenty (20) to thirty (30) days following receipt of the Commissioner's letter of notification. An additional ten (10) days may be granted for the response by the local government. If no response is received within forty-five (45) days, the local government shall be considered as not having responded.
3. If the local government's response is not considered satisfactory toward achieving an "as least as effective as" status, the Commissioner shall negotiate with the local government in an effort to obtain a satisfactory response. Such negotiation, however, will not extend beyond one hundred twenty (120) days following the date of the Commissioner's original letter of notification.
4. Whenever a local government is considered as not having responded or whenever negotiations have not resulted in a satisfactory response, the Commissioner shall, within twenty (20) days following a time period specified for response or negotiation, submit a copy of all written communications and a written summary of all verbal communications of his efforts to have the local government attain an "at least as effective as" status to the Governor. The Commissioner shall request that the Governor issue an executive order declaring the local government's program under T.C.A. §50-3-910 null and void, thereby allowing such local government to be treated as a private employer for the purpose of enforcing all provisions of the Act.

- (c) The Commissioner shall include a summary of any action taken under the provisions of this rule in his annual report to the governor and the general assembly, together with the reasons therefor, and may recommend legislation as appropriate to insure that employers meet the objectives of the Act.

Authority: T.C.A. §§4-3-1411, 50-3-102, 50-3-201, 50-3-906 through 50-3-908, 50-3-910, and 50-3-912.

CHAPTER 0800-1-1
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR GENERAL INDUSTRY

AMENDMENT

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 31, 2002 to July 31, 2002”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 31, 2002 except as provided in Rule 0800-1-1-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

CHAPTER 0800-1-3
OCCUPATIONAL SAFETY AND HEALTH RECORD-KEEPING AND REPORTING

AMENDMENTS

Paragraph (8) of Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

- (8) Recording criteria for cases involving occupational hearing loss.
 - (a) Basic requirement. If an employee’s hearing test (audiogram) reveals that the employee has experienced a work-related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee’s total hearing level is 25 decibels (dB) or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, you must record the case on the OSHA 300 Log.
 - (b) Implementation.
 1. What is a Standard Threshold Shift? A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as adopted by Rule 0800-1-1-.06 as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.
 2. How do I evaluate the current audiogram to determine whether an employee has an STS and a 25-dB hearing level?
 - (i) STS. If the employee has never previously experienced a recordable hearing loss, you must compare the employee’s current audiogram with that employee’s baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee’s current audiogram with the employee’s revised baseline audiogram (the audiogram reflecting the employee’s previous recordable hearing loss case).
 - (ii) 25-dB loss. Audiometric test results reflect the employee’s overall hearing ability in comparison to audiometric zero. Therefore, using the employee’s current audiogram, you must use the average hearing level at 2000, 3000, and 4000 Hz to determine whether or not the employee’s total hearing level is 25 dB or more.

3. May I adjust the current audiogram to reflect the effects of aging on hearing? Yes. When you are determining whether an STS has occurred, you may age adjust the employee's current audiogram results by using Tables F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95 as adopted by Rule 0800-1-1-.06. You may not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.
4. Do I have to record the hearing loss if I am going to retest the employee's hearing? No, if you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the 1910.95 noise standard indicates that an STS is not persistent, you may erase or line-out the recorded entry.
5. Are there any special rules for determining whether a hearing loss case is work-related? No. You must use the requirements in Rule 0800-1-3-.03(3) to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, you must consider the case to be work related.
6. If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case? If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.

Authority: T.C.A. §§ 4-3-1411, 50-3-701, and 50-3-917.

**CHAPTER 0800-1-6
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION
AMENDMENT**

Paragraph (2) of Rule 0800-1-6-.02 Adoption and Citation of Federal Standards is amended by changing the date in the second line from "January 31, 2002" to "July 31, 2002", so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 31, 2002 except as provided in Rule 0800-1-6-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

**CHAPTER 0800-1-7
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE**

AMENDMENTS

Paragraph (2) of Rule 0800-1-7-.01 Adoption and Citation of Federal Standards is amended by changing the date in the second line from "January 31, 2002" to "July 31, 2002", so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 31, 2002 except as provided in Rule 0800-1-7-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date in the second line from "January 31, 2002" to "July 31, 2002", so that as amended the rule shall read:

0800-1-7-.02 EXCEPTIONS TO ADOPTION OF FEDERAL STANDARDS IN 29 CFR PART 1928. As of July 31, 2002, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

REPEALS

Chapter 0800-1-5 Safety and Health Provisions for the Public Sector is repealed in its entirety.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

The proposed rules set out herein were properly filed in the Department of State on the 13th day of September, 2002, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-21)

**THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800
DIVISION OF WORKERS' COMPENSATION
UNINSURED EMPLOYERS FUND**

**CHAPTER 0800-2-15
UNINSURED EMPLOYERS FUND**

Presented herein are proposed rules of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development 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 with the Uninsured Employers Fund, Workers' Compensation Division, Tennessee Department of Labor and Workforce Development, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243 and in the Department of State, Eighth Floor, William Snodgrass Building, Tennessee Tower, 312 8th Ave. North, Nashville, TN 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: Shara Hamlett, TN Dept. of Labor and Workforce Dev., Division of Workers' Compensation, Uninsured Employers Fund, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, Telephone: (615) 253-6261.

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (b) of paragraph (1) of rule 0800-2-15-.10 Representation at Show Cause Hearing is amended by adding the word "general" after the first word "Any" and before the word "partnership" and by deleting the phrase "or employees" and by adding the phrase "with written authority from all other partners" after the word "partners" and before the phrase "or may" so that as amended the subparagraph shall read:

- (b) Any general partnership receiving due notice to appear at a show cause hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.

Subparagraph (c) of paragraph (1) of rule 0800-2-15-.10 Representation at Show Cause Hearing is amended by deleting the word "receiving" and by adding a comma (",") and the phrase "limited partnership, limited liability company, or any other business entity not specifically referenced in this rule 0800-2-15-.10 which receives" after the word "corporation" and before the word "due" so that as amended the subparagraph shall read:

- (c) Any corporation, limited partnership, limited liability company, or any other business entity not specifically referenced in this rule 0800-2-15-.10 which receives due notice to appear at a show cause hearing shall appear at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the State of Tennessee.

Authority: T.C.A. §§50-6-412, 50-6-233, 50-6-118, and 50-6-801

The proposed rules set out herein were properly filed in the Department of State on the 13th day of September, 2002, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-20)

THE TENNESSEE BOARD OF REGENTS - 0240
STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE

AUSTIN PEAY STATE UNIVERSITY
CHAPTER 0240-3-1
STUDENT DISCIPLINARY RULES

Presented herein are proposed amendments of the Tennessee Board of Regents submitted pursuant to Tennessee Code Annotated, § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Board of Regents to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Suite 350 of the Genesco Park Building located at 1415 Murfreesboro Road, Nashville, TN 37217 and in the Department of State, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue, North, Nashville, TN 37219, and must be signed by twenty-five (25) persons who will be affected by the rules, 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: Mary M. Slater, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217, Tennessee Board of Regents, 615-366-4438.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 0240-3-1-.01 Institution Policy Statement is amended by adding new paragraphs (3) and (4). New paragraphs (3) and (4) shall read:

- (3) Disciplinary action may be taken against a student for violations of the foregoing Regulations which occur on University owned, leased, or otherwise controlled property, or which occur off-campus when the conduct impairs, interferes with, obstructs any University activity or the missions, processes and functions of the University. In addition, disciplinary action may be taken on the basis of any conduct, on or off campus, which violates local, state, or federal laws, which violates University policies for Student Organizations, or which poses a substantial threat to persons or property within the University Community.
- (4) For the purpose of these Regulations, a “student” shall mean any person who is registered for study at Austin Peay State University for any academic period. A person shall be considered a student during any period which follows the end of an academic period which the student has completed until the last day for registration for the next succeeding regular academic period, and during any period which the student is under suspension from the university.

Authority: T.C.A. §49-8-203.

Subparagraph (a) of paragraph (2) of rule 0240-3-1-.02 Disciplinary Offenses is amended by deleting the subparagraph and substituting instead the following language so that as amended subparagraph shall read:

- (a) Conduct dangerous to self or others. Any conduct which constitutes a serious danger to one’s self or any person’s health, safety or personal well-being, including any physical abuse or immediate threat of abuse.

Subparagraph (d) of paragraph (2) of rule 0240-3-1-.02 Disciplinary Offenses is further amended by adding a new part 4. New part 4. shall read:

4. Any form of disruptive behavior in the classroom, during any campus event or activity, or at any location on campus.

Paragraph (2) of rule 0240-3-1-.02 Disciplinary Offenses is further amended by adding new subparagraph (y). New subparagraph (y) shall read:

- (y) Filing a false complaint or statement. Any behavior whereby a student knowingly submits a false complaint or statement alleging a violation of these regulations by a student, organization, or university employee.

Authority: T.C.A. §49-8-203.

Paragraph (2) of rule 0240-3-1-.03 Academic and Classroom Misconduct is amended by deleting the text of the paragraph and substituting instead the following language so that as amended paragraph (2) shall read:

- (2) Academic dishonesty may be defined as any act of dishonesty in academic work. This includes, but is not limited to, plagiarism, the changing or falsifying of any academic documents or materials, cheating and the giving or receiving of unauthorized aid in tests, examinations, or other assigned work. Students guilty of academic misconduct, either directly or indirectly through participation or assistance, are immediately responsible to the instructor of the class. Penalties for academic misconduct will vary with the seriousness of the offense and may include, but

are not limited to, a grade of “F” on the work in question, a grade of “F” for the course, reprimand, probation, suspension, and expulsion.

Paragraph (2) of rule 0240-3-1-.03 Academic and Classroom Misconduct is further amended by adding new paragraphs (4) and (5). New paragraphs (4) and (5) shall read:

- (4) Disruptive behavior in the classroom may be defined, but is not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, repeated outbursts from a student which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining classroom decorum, etc.), the continued use of any electronic or other noise or light emitting device which disturbs others (e.g., disturbing noises from beepers, cell phones, palm pilots, lap-top computers, games, etc.).
- (5) Class attendance and punctuality requirements are contracted between the faculty and the students, through specific expectations for attendance and punctuality and specific consequences that are outlined by individual faculty members in the printed syllabus for each course.

Students are expected to attend classes regularly and on time and are responsible for giving explanations/rationale for absences and lateness directly to the faculty member for each course in which they are enrolled. In cases where student absences are the result of emergency circumstances (e.g., death in the family, a student’s serious injury or incapacitating illness), for which students are unable to make immediate contact with faculty, the student may contact the Office of Student Affairs for assistance in providing such immediate notification to faculty. However, the student remains responsible for verifying the emergency circumstances to faculty and for discussing arrangements with faculty for completion of course work requirements.

Paragraph (2) of rule 0240-3-1-.03 Academic and Classroom Misconduct is further amended by adding new subparagraph (n). New subparagraph (n) shall read:

- (n) Fines. Penalties in the form of fines may be enforced against a student or an organization whenever the appropriate hearing officer(s) or hearing body deems appropriate. The sanction of fines may be imposed in addition to other forms of disciplinary sanctions. Failure to pay fines to the Business Office within two weeks of the decision will result in further disciplinary action.

Authority: T.C.A. §49-8-203.

Subparagraph (c) of paragraph (2) of rule 0240-3-1-.05 Disciplinary Procedure is amended by deleting the subparagraph in its entirety and substituting the following language so that as amended subparagraph (c) shall read:

- (c) Once advised of the hearing options, the accused student must select an option within 3 class days of receipt of notice of pending charges against him/her. The student elects the procedure to be followed by completing and signing an Election of Procedure form and/or waiver form. Once the election shall be made, the decision is final and may not be changed during the pendency of the matter.

Subparagraph (b) of paragraph (8) of rule 0240-3-1-.05 Disciplinary Procedure is further amended by adding a new part 8. New part 8. shall read:

8. Student organizations that sponsor events off campus, where alcoholic beverages are present and available for consumption, must adhere to all local, state and national laws concerning alcoholic beverages and must follow the University’s risk management guidelines for student organizations.

Subparagraph (c) of paragraph (8) of rule 0240-3-1-.05 Disciplinary Procedure is further amended by adding the words “given a reprimand, be” so that as amended subparagraph (c) shall read:

- (c) **Sanctions Against Student Organizations.** Any registered student organization may be given a reprimand, be placed on probation, suspension, and/or restriction or may have its registration withdrawn by the Assistant Vice President for Student Affairs, or by another Student Affairs Administrator appointed by Vice President for Student Affairs. Such actions may be taken after having a hearing conducted in accordance with the procedures outlined in this document for disciplinary procedures. In the case of Withdrawal of Registration of an organization, the procedures to be used will be the contested case provisions of the Tennessee Uniform Administrative Procedures Act, unless those provisions have been waived in writing by an authorized representative of the student organization. Such action may be taken for any one of the following reasons:

Authority: T.C.A. §49-8-203.

The proposed rules set out herein were properly filed in the Department of State on the 6th day of September, 2002 and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-04)

THE TENNESSEE BOARD OF REGENTS - 0240
STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE
MIDDLE TENNESSEE STATE UNIVERSITY
CHAPTER 0240-3-4
STUDENT DISCIPLINARY RULES

Presented herein are proposed amendments of the Tennessee Board of Regents submitted pursuant to Tennessee Code Annotated, § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Board of Regents to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Suite 350 of the Genesco Park Building located at 1415 Murfreesboro Road, Nashville, TN 37217 and in the Department of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue, North, Nashville, TN 37219, and must be signed by twenty-five (25) persons who will be affected by the rules, 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: Mary M. Slater, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217, Tennessee Board of Regents, 615-366-4438.

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (c) of paragraph (4) of rule 0240-3-4-.04 Disciplinary Procedures is amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (c) shall read:

- (c) In either case, and based upon TBR Policy #3:02:00:01 regarding academic misconduct, the instructor will assign an appropriate grade. This information, along with all supporting documentation of the violation, will be forwarded to the Assistant Dean of Students.

Authority: T.C.A. §49-8-203.

Paragraph (1) of rule 0240-3-4-.06 Traffic and Parking Regulations is amended by adding new subparagraph (k). New subparagraph (k) shall read:

- (k) The overall objective of MTSU parking administration is to provide safe, attractive, and sufficient parking facilities that allow faculty, staff, and students to park at a reasonable cost and within a 10 to 15 minute walk or ride to the core of the campus.

Subparagraph (d) of paragraph (1) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the last sentence of the paragraph and substituting instead the following language so that as amended subparagraph (d) shall read:

- (d) The registrant of the vehicle is held responsible for the safe and lawful operation of the vehicle, the parking of the vehicle, and all traffic/parking citations issued against the vehicle, regardless of who is operating the vehicle at the time of the incident. A violation notice is not excused on the plea that another person was driving the vehicle or using your parking permit.

Subparagraph (f) of paragraph (1) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the word “will” and adding the word “may” so that as amended subparagraph (f) shall read:

- (f) The University regards the possession and use of a vehicle on the campus as a privilege which may be revoked for justifiable reason. These may include but are not limited to any of the following:

Part 4. of subparagraph (f) of paragraph (1) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the letter (h) and adding the letter (i) so that as amended part 4. shall read:

- 4. Five or more parking citations in a semester. See paragraph (i) below.

Part 5. of subparagraph (f) of paragraph (1) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and substituting instead the following language so that as amended part 5. shall read:

- 5. Obtaining an MTSU Parking Permit through False Pretense. Parking Services may remove any permit which has been forged, altered, or obtained illegally.

Subparagraph (i) of paragraph (1) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the subparagraph in its entirety and substituting instead the following language so that as amended subparagraph (i) shall read:

- (i) Any vehicle receiving two (2) or more citations in one semester for “No Campus Permit” or failure to have a permit displayed according to the provisions of rule 0240-3-4-.07 (1)(m) will receive a written warning. If after three (3) working days following the issuance of the warning the vehicle is found parked on campus without being properly registered and having the permit properly displayed as set forth in rule 0240-3-4-.07 (i)(m), the vehicle will be towed at the owner’s/registrant’s expense. A working day is defined as a weekday unless it is an official University holiday.

Parts 1. and 2. of subparagraph (b) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the parts in their entirety and substituting the following language so that amended parts 1. and 2.. shall read:

1. White – Available to Faculty/Administrators/Staff (including resident directors and graduate assistants). White permits also are permitted in Green parking areas. Faculty, administrators, and staff may not transfer their permit to any student (or student vehicle).
2. Green – Available to Faculty, Administrators, Staff and Students.

Part 3. of subparagraph (b) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and renumbering the remaining parts appropriately.

Subparagraph (b) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding new parts 5., 6., and 7. New parts 5., 6., and 7. shall read:

5. Purple – Available to residents of Womack Lane Apartments only.
6. Red – Available to residents of Scarlett Commons only.
7. Gold – Available to residents of Greek Row only.

Part 2. of subparagraph (c) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the part so as amended part 2. shall read:

2. Health Services reserved twenty-four (24) hours a day.

Part 4. of subparagraph (c) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the part so as amended part 4. shall read:

4. Womack Lane Apartments parking area – reserved 24 hours a day.

Subparagraph (c) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding new parts 5., 6., and 7. New parts 5., 6., and 7. shall read:

5. Housing Staff only – reserved 24 hours a day.
6. Maintenance Spaces – reserved 24 hours a day.
7. Scarlett Commons – reserved 24 hours a day.

Paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding a new subparagraph (n). New subparagraph (n) shall read:

- (n) The residents of Womack Lane Apartments, Scarlett Commons, and Greek Row are not allowed to park elsewhere on the campus, except in the housing area in which they reside. Any designated overflow parking will be announced by public notice by the Parking Services Office to the residents.

Subparagraph (d) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the subparagraph in its entirety and substituting instead the following language so that as amended subparagraph (d) shall read:

- (d) Vehicles are not to be parked at any time where parking is not designated, where curbing is painted yellow, where sidewalks intersect streets, on sidewalks, across parking lines, on campus lawns (grass) or other places where signs indicate no parking. Parking is allowed only in clearly designated parking spaces. Vehicles that are parked or are waiting in a fire lane will be towed. In gravel lots, legal parking spaces are designated by concrete bumper blocks, except for those painted yellow.

Subparagraph (f) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph in its entirety and relettering the remaining subparagraphs appropriately.

Subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the word “only” in the first line of the paragraph so that as amended subparagraph (h) shall read:

- (h) All students and employees are to park in their assigned areas, Monday through Friday, 7:00 a.m. to 6:30 p.m., except for the following parking lots which will open for all permitted parking at 5:30 p.m.

Part 1. of subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and renumbering the remaining parts appropriately.

Part 1. (formerly part 2.) of subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the word “library” and adding the words “Todd Building” so that as amended part 1. shall read:

1. Lot #19, ROTC lot, which is west of Forrest Hall and north of the Todd Building.

Part 3. (formerly part 4.) of subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and substituting instead the following so that as amended part 3. shall read:

3. Lot #25: the lot located north of the Cason-Kennedy Nursing Building.

Part 5. (formerly part 6.) of subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and renumbering the remaining parts appropriately.

Part 5. (formerly part 6.) of subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding the word “South” so that as amended part 5. shall read:

5. Lot #36: the lot located South of the University Library.

Subparagraph (h) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding new parts 6. and 7. New parts 6. and 7. shall read:

6. Lot #76: The lot located east of Voorhies Industrial Studies and north of the Midget Business Building.
7. After 6:30 p.m. Monday through Friday and on the weekends, White and Green permit parking areas are open for any permitted vehicle. Yellow curbs, no parking zones, disabled and reserved spaces are in effect 24 hours a day.

Subparagraph (i) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding a sentence at the end of the subparagraph so that as amended subparagraph (i) shall read:

- (i) Short-term parking is governed by parking meters. The parking meters are considered in operation from 7:30 a.m. to 6:30 p.m., Monday through Friday. A charge of fifty cents (.50) for 30 minutes is required while parked in these spaces.

Subparagraphs (k), (l), and (m) of paragraph (2) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the subparagraphs in their entirety and substituting instead the following so that as amended subparagraphs (k), (l), and (m) shall read:

- (k) Vehicles will be towed from campus streets, parking areas, lawns, drives, restricted areas, loading areas, etc., if the vehicles are parked or left in violation of University regulations, City of Murfreesboro ordinances and/or Tennessee State laws pertaining to motor vehicles or if said vehicle constitutes a traffic/pedestrian hazard. The cost of towing and any penalties will be the responsibility of the owner/regis-trant. All tow zones are enforced twenty-four (24) hours a day.
- (l) The operator of any disabled vehicle parked in violation of University regulations must report the vehicle immediately to Parking Services. Failure to report may result in traffic citations and/or towing. The vehicle must be called in each day it is disabled and parked in violation of University regulation.
- (m) No recreational vehicles such as boats, jet skis, and all-terrain vehicles and/or their travel trailers shall be parked or stored on campus property, except for equipment purchased by academic/administrative departments for University related purposes.

Subparagraph (h) of paragraph (3) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the word “as” and substituting the words “as well as” so that as amended subparagraph (h) shall read:

- (h) Littering from a vehicle (as well as littering in general) is prohibited and subject to a fine.

Paragraph (3) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding new subparagraph (n). New subparagraph (n) shall read:

- (n) All State of Tennessee laws, City of Murfreesboro ordinances, and University regulations pertaining to motor vehicles are applicable 24 hours a day, unless otherwise noted.

Paragraph (4) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the title of the paragraph and substituting the following so that as amended paragraph (4) shall read:

- (4) Towing/Booting

Subparagraph (a) of paragraph (4) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (a) shall read:

- (a) Vehicles will be towed/booted if the vehicle is parked or left in violation of University regulations, City of Murfreesboro ordinances and/or Tennessee State laws pertaining to motor vehicles, or if said vehicle constitutes a traffic/pedestrian hazard. The owner/regis-trant of the vehicle will be responsible for any fines assessed against the vehicle and the cost of towing/booting. Vehicles may be towed/booted for, but not limited to, the following violations:

Part 1. of subparagraph (a) of paragraph (4) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding the words “without disability permit” so that as amended part 1. shall read:

1. Parked in a disabled parking space/ramp without disability permit.

Part 5. of subparagraph (a) of paragraph (4) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and renumbering the remaining parts accordingly.

Part 7. (formerly part 8.) of subparagraph (a) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding the words “(paid or not paid)” so that as amended part 7. shall read:

7. Five or more traffic/parking citations (paid or not paid) in a semester.

Part 14 (formerly part 15.) of subparagraph (a) of paragraph (4) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the part and substituting instead the following language so that as amended part 14. shall read:

14. Faculty/staff/administration with outstanding fines from prior semester who receive first citation after permit expiration.

Subparagraph (a) of paragraph (4) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding new part 15. New part 15. shall read:

15. Any vehicle parked on campus with no visible means of identification; i.e., the license tag has been removed and the vehicle identification number covered or removed.

Subparagraph (b) of paragraph (5) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (b) shall read:

- (b) All visitors are requested to use parking meters or to report to the Parking Services Office in the Tennessee Livestock Center parking lot off Greenland Drive to secure a visitor’s parking permit. This permit will be made available free of charge. Everyone must pay at the meters.

Subparagraph (d) of paragraph (5) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (d) shall read:

- (d) Visitors receiving an unregistered violation (No. 32: No Campus Permit) should sign the ticket and mail or deliver the ticket to Parking Services, P.O. Box 147, MTSU, Murfreesboro, TN 37132.

Subparagraphs (a) and (b) of paragraph (6) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraphs and substituting the following language so that as amended subparagraph (a) and (b) shall read:

- (a) Any student, other than one holding a faculty/administrative/staff permit, who receives a parking/traffic citation may appeal the citation within seven (7) days of issuance by going to the SGA Web site at <http://www.edu/~sga>. Those students holding faculty/administrative/staff permits may appeal according to rule 0240-3-4-.06 (6)(b).
- (b) Any employee or student holding a faculty/administrative/staff permit who receives a citation may appeal the citation within seven (7) days of issuance by filing an appeal form or by going to the Parking Services Web site at www.MTSU.com/Services, P.O. Box 147. The University Parking and Traffic Committee will handle disposition of the appeal.

Subparagraph (c) of paragraph (6) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the subparagraph in its entirety and relettering the remaining subparagraphs accordingly.

Paragraph (6) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding a new subparagraph (d). New subparagraph (d) shall read:

- (d) The payment of citations will in no way restrict the SGA Traffic Court or the University Parking and Traffic Committee from revoking parking privileges.

Subparagraph (a) of paragraph (7) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the words “and Security” so that as amended subparagraph (a) shall read:

- (a) All accidents involving a vehicle must be reported to the Department of Public Safety as soon as possible (T.C.A. §55-10-106). The vehicle(s) are not to be moved until the investigating officer instructs the parties to do so. Failure to comply with the provisions of this paragraph may result in criminal prosecution (T.C.A. §§55-10-101 through 55-10-110).

Subparagraph (b) of paragraph (7) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the subparagraph in its entirety and substituting instead the following language so that as amended subparagraph (b) shall read:

- (b) A copy of the accident report will be furnished to all involved parties at \$1 per page. The copy may be secured at the Department of Public Safety, Monday through Friday, 8:00 a.m. – 4:00 p.m.

Subparagraph (a) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the figures “\$5.00” and “\$300.00” and substituting the following language so that as amended subparagraph (a) shall read:

- (a) Fines for violations listed under (a) of this section range in amount from \$10.00 to \$200.00. Specific amounts currently charged are published in the MTSU Traffic and Parking Regulations, available at the Parking Authority Office. Fines are subject to change on a yearly basis, pursuant to the regular planning processes of the University. Proposed increases in fines are submitted to the TBR for approval.

Part 13. of subparagraph (a) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding the word “control” so that amended part 13. shall read:

- 13. Failure to obey traffic control signals/signs

Part 20. of subparagraph (a) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and renumbering the remaining parts appropriately.

Part 21. (formerly part 22.) of subparagraph (a) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and substituting the following language so that as amended part 21. shall read:

- 21. Parked in a firelane

Part 23. (formerly part 24.) of subparagraph (a) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the part in its entirety and substituting the following language so that as amended part 23. shall read:

Subparagraph (a) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by adding new parts 25. through 29. New parts 25. through 29. shall read:

- 25. Displaying a White lost/stolen permit

26. Displaying a Green lost/stolen permit
27. Displaying a Blue lost/stolen permit
28. Displaying a forged/altered permit
29. Displaying an unauthorized permit

Subparagraph (b) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (b) shall read:

- (b) Vehicles of violators with five (5) or more citations (paid or not paid) in a semester will be towed/booted at the owner's/registrant's expense.

Subparagraph (c) of paragraph (8) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph in its entirety and substituting the following language so that as amended subparagraph (c) shall read:

- (c) Citations may be given every four (4) hours with no more than two (2) tickets to be issued per day for the same violation at the same location. Overtime parking citations (meters) will be given every hour, with no restrictions on the number issued per day.

Paragraph (9) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the paragraph and substituting instead the following language so that as amended paragraph (9) shall read:

- (9) Parking Services/Public Safety

Subparagraph (a) of paragraph (9) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that as amended subparagraph (a) shall read:

- (a) The Parking Services Office is located in the Tennessee Livestock Center parking lot off Greenland Drive. The phone number is 898-2850. The office is open Monday through Friday from 7:30 a.m. to 4:30 p.m.

Subparagraph (b) of paragraph (9) of rule 0240-3-4-.06 Traffic and Parking Regulations is further amended by deleting the words "and Security" so that as amended subparagraph (b) shall read:

- (b) The Department of Public Safety is recognized by the State of Tennessee as an independent police agency and is empowered to perform all duties required by law.

Authority: T.C.A. §49-8-203.

Subparagraphs (a), (b), and (c) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is amended by deleting the subparagraphs in their entirety and substituting the following language so that as amended subparagraphs (a), (b), and (c) shall read:

- (a) Registration of all vehicles, including motorcycles, motor scooters and mopeds, with Parking Services is required beginning with the Fall Semester and continuing through the academic year (August 16 through August 15).

- (b) All students (including part-time, full-time, graduate students, night students, etc.), administrators, faculty, and staff, whether full- or part-time, intending to park a vehicle on campus must obtain a permit through Parking Services and place the permit on or in the vehicle being operated. The issuance of permits will be limited to one permit per person with the exception of Womack Lane Apartments residents who will be allowed two permits per family. All registrants will be responsible for their issued permit throughout the academic year (August 16 through August 15).
- (c) The registrant of a permit will be responsible for parking violations received by any vehicle bearing his/her parking permit. Permits may only be used by the permit holder registered with Parking Services. Dependents, friends and/or associates of any authorized permit holder are not authorized to use that person's permit while parking for their personal convenience.

Subparagraph (e) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the subparagraph in its entirety and relettering the remaining subparagraphs appropriately.

Subparagraphs (e) (formerly (f)), (f) (formerly (g)), and (g) (formerly (h)) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the subparagraphs in their entirety and substituting instead the following language so that as amended subparagraphs (e), (f), and (g) shall read:

- (e) White – Available to Faculty/Administrators/Staff (including resident directors and graduate assistants). White permits also are permitted in Green parking areas. Faculty, administrators, and staff may not transfer their permit to any student (or student vehicle). NOTE: Parking permits will be denied for faculty/administration/staff who have outstanding fines from prior semester(s) until they are paid in full. The first citation after permit expiration will result in towing of vehicle.
 1. Green – Available to administrators, faculty, staff and students.
 2. Blue – Students and Employees with Disabilities: Available to qualified students and employees.
 3. Purple – Available to residents of Womack Lane Apartments only.
 4. Red – Available to residents of Scarlett Commons only.
 5. Gold – Available to residents of Greek Row only.
- (f) Any person who changes parking category, as defined in (e) should bring his/her original permit to the Parking Services. Any additional fees associated with the change in permit must be paid at that time.
- (g) Damaged permits must be replaced within three (3) working days. The remnants must be turned into the Parking Services at the time of replacement. Failure to do so will result in the individual having to pay the full registration fee.
- (h) Temporary Parking Permits will be issued as follows:
 1. To any employee or student operating a vehicle as a temporary substitute for a registered vehicle. The permit will be valid for seven (7) days from the date of issuance and a total of three (3) may be issued during any semester. The permit will indicate the appropriate color code area in which the vehicle may park. This permit is subject to a fee.
 2. Temporary Disabled Permits will be issued for injuries or disabilities of limited duration, renewable weekly, or as specified by the Parking Services Office. Persons must have a physician's statement

certifying the need for a temporary disabled permit. The doctor's statement must state the length of time the permit will be needed, and the statement must be on letterhead. Those with temporary disabled permits must park in the White or Green spaces only. The Blue disabled parking spaces are reserved for those holding permanent disabled parking permits.

3. Temporary Parking Permits may be issued to visitors, including vendors, and service and repair personnel, and will be valid for all parking areas not otherwise prohibited for the duration of time appropriate.
4. Temporary loading/unloading permits may be issued at the discretion of Parking Services. This permit allows the operator of the vehicle up to but not to exceed thirty (30) minutes parking in a loading/unloading zone for the express purpose of loading or unloading his/her vehicle.

Parts 1. and 2. of subparagraph (i) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the text of the parts in their entirety and substituting the following language so that as amended parts 1. and 2. shall read:

1. Persons must have a physician's statement certifying mobility impairment as defined in State Law §55-21-102. Persons with a state-issued placard are exempt from having a physician's statement but must prove ownership of a state-issued plate or placard. Persons must have a Middle Tennessee State University Disabled Parking Permit to ensure access to privileges and rights of a MTSU student or employee
2. Applications will be submitted to the Parking Services Office, which office will determine the need or lack of need for a permit for a student or employee.

Subparagraph (i) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by adding new part 4. New part 4. shall read:

4. Temporary permits will be issued for injuries or disabilities of a limited duration, renewable weekly, or as specified by the Parking Services Office. Those with temporary permits must park in white or green spaces only however, exceptions may be allowed. The blue disabled parking spaces are reserved for those holding permanent disabled parking permits.

Subparagraph (k) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that as amended subparagraph (k) shall read:

- (k) The MTSU parking permit must be properly attached to the front windshield in the extreme lower corner of the driver's side or hung from the rear view mirror of the vehicle being operated with the decal number facing the outside of the car and clearly readable. In those cases where compliance with the above is not feasible, the permit must be clearly visible through the front windshield when viewed from outside, or the registrant must consult with Parking Services for proper placement of the permit. The responsibility of transferring and properly displaying the hang tag rests with the individuals to whom the permit was originally issued. If for some reason the hang tag is not transferred to the vehicle being parked on campus, the individual originally purchasing the hang tag will be required to obtain a temporary one-day permit.

Subparagraph (p) (formerly subparagraph (q)) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (p) shall read:

- (p) If an individual with a current permit receives a citation for violation of paragraph (1), the citation will be cancelled only if the citation is taken to the Parking Services office within seven (7) class days of issuance of the citation, and the violator can show the current permit at that time. (Vehicle must be parked in designated parking area according to permit color for the citation to be cancelled.) No more than three (3) such citations will be cancelled per semester. (Note: In the event that a vehicle receives more than one “No Campus Permit” ticket during a calendar day, those tickets will be reviewed as one offense.) A class day is considered Monday through Friday, unless it is an official University holiday for faculty, staff, and/or students.

Subparagraph (q) (formerly subparagraph (r)) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (q) shall read:

- (q) You will be responsible for the security of your parking permit, keep your vehicle locked to prevent theft. If a permit is lost or stolen, you must fill out a “Parking Permit Loss Report” at Parking Services and pay a replacement fee to obtain a new permit.

Subparagraph (r) (formerly subparagraph (s)) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (r) shall read:

- (r) Immediate family members of faculty, administrators, staff and students must park at meters or register their vehicles with Parking Services by obtaining a temporary parking permit. Failure to comply may result in the vehicle owner being issued an appropriate citation, the vehicle being towed/booted, and the vehicle owner being responsible for any expenses and fines associated with the vehicle

Subparagraph (s) (formerly subparagraph (t)) of paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the text of the subparagraph and substituting instead the following language so that as amended subparagraph (s) shall read:

- (s) It is considered fraudulent for a registered permit holder to give his/her permit to another person for use on the campus. Permits are transferable from vehicle to vehicle. Permits are not transferable from person to person. When a permit is reported as lost or stolen, but is found in another vehicle on campus, an inquiry will be made into the permit. In the event it is found that an individual reported a permit lost or stolen, but in fact gave the permit to another individual for use, both parties will be cited with a violation for their actions.

Paragraph (1) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by adding a new subparagraphs (t) and (u). New subparagraphs (t) and (u) shall read:

- (t) Womack Lane Apartments, Scarlett Commons and Greek Row
 - (1) All residents of Womack Lane Apartments, Scarlett Commons, and Greek Row are required to obtain a parking permit according to their resident area (see Section 0240-3-4-.07 1(f)). A maximum of two permits may be purchased by any family residing at Womack Lane Apartments.
 - (2) Any resident of Womack Lane Apartments, Scarlett Commons, or Greek Row who holds a valid Blue parking permit or White parking permit is also required to receive a special validation sticker that is to be placed adjacent to the MTSU parking permit. This validation sticker may be received through the director of Womack Lane Apartments, Scarlett Commons or Greek Row. (The validation sticker will be issued free of charge. There will be a different validation sticker for each resident area.)

- (3) Abandoned/immobile vehicles parked at Womack Lane Apartment, Scarlett Commons, and/or Greek Row will be towed at owner's/registrant's expense (TCA §§55-16-101 to 55-16-109).
 - (4) The parking areas within Womack Lane Apartments, Scarlett Commons, and Greek Row are reserved for the residents of these areas only. All other vehicles are subject to be cited and/or removed at the owner's/registrant's expense.
 - (5) The residents of Womack Lane Apartments, Scarlett Commons, and Greek Row are not allowed to park elsewhere on campus, except in the housing area in which they reside. Any designated overflow parking will be announced by public notice by the Parking Office to the residents.
 - (6) Any resident of Womack Lane Apartments, Scarlett Commons or Greek Row who holds a valid MTSU Blue parking permit may park in any legal Blue, White, or Green parking space as well as the parking meters.
 - (7) Any resident of Womack Lane Apartments, Scarlett Commons or Greek Row who holds a valid MTSU White parking permit may park in any legal White or Green permit parking area.
 - (8) Any resident of Womack Lane Apartments, Scarlett Commons, or Greek Row who holds a valid MTSU parking permit may park in any legal green parking permit area during the Summer session time period of May 15 through August 15. At all other time periods, residents must park in the housing area in which they reside or in the designated overflow parking areas that are announced by public notice by the Parking Services Office.
- (u) R-X (Raider Xpress) Shuttle Service
- a. The Raider Xpress shuttles operate along the shuttle route defined on the map available through the Parking Services office. Service will be provided from 7:30 a.m. to 10:00 p.m., Monday through Thursday and 6:30 a.m. to 6:00 p.m., on Friday. This service is available only when classes are in session. Times and routes are subject to change. This service is designed to transport faculty, staff, students and visitors throughout the campus and to help alleviate congestion at the campus core. All shuttles are accessible to the disabled. For further information regarding this service, please call 898-2850.

Paragraph (2) of rule 0240-3-4-.07 Registration of Motor Vehicles is further amended by deleting the entire text of the paragraph, including all subparagraphs and parts in their entirety.

Authority: T.C.A. §49-8-203.

**MIDDLE TENNESSEE STATE UNIVERSITY
CHAPTER 0240-4-4
STUDENT HOUSING RULES**

AMENDMENTS

Paragraph (6) of rule 0240-4-4-.03 Residence Hall Conduct and Disciplinary Sanctions is amended by deleting the text of the paragraph and substituting instead the following language so that as amended paragraph (6) shall read:

- (6) **Cooking.** Students living in single or family student housing apartment dwellings are encouraged to make full use of the cooking facilities that are provided. Students living in residence halls are permitted to use approved microwave ovens, popcorn makers, and electric coffee pots. As mandated by the University Safety Manual, all other electrical cooking appliances may not be operated in residence hall rooms.

Paragraph (11) of rule 0240-4-4-.03 Residence Hall Conduct and Disciplinary Sanctions is further amended by adding a sentence to the end of the paragraph so that as amended paragraph (11) shall read:

- (11) **Bicycles.** Parking bicycles, mopeds, and motorcycles is not permitted in hallways, stairways, outside walkways, fire escapes, or lobbies of the residence halls. Bicycles may be kept in residence hall rooms providing they do not block entrances or exits. Bicycles found improperly parked or secured may be removed by University staff and impounded by the Public Safety Department.

Paragraph (22) of rule 0240-4-4-.03 Residence Hall Conduct and Disciplinary Sanctions is further amended by adding an additional paragraph so that as amended paragraph (22) shall read:

- (22) **Cable.** Every room in the residence halls is equipped with basic cable service free of charge. Expanded basic and premium channels may be available at an additional cost and, if available, can be purchased directly from Comcast cable company. A cable ready television is all that is required to activate cable. Cable reception problems should be reported to the hall staff. The cable company reserves the right to discontinue services to residents who fall behind in payment for premium services or who tamper with cable equipment.

Theft of cable services is prohibited. Cable theft is the receipt of cable services without the express authorization of a cable television operator. Theft includes splitting cable wires or attaching a black box that can alter the cable equipment owned by the operator. Such action is prohibited in all residential facilities.

Authority: T.C.A. §49-8-203.

The proposed rules set out herein were properly filed in the Department of State on the 6th day of September, 2002 and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-06)

**THE TENNESSEE DEPARTMENT OF SAFETY - 1340
ADMINISTRATIVE DIVISION**

**CHAPTER 1340-2-4
HANDGUN CARRY PERMIT PROCEDURES**

Presented herein are proposed amendments of the Department of Safety submitted pursuant to Tennessee Code Annotated, Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Safety 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 Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department of Safety Legal Division, 1150 Foster Ave. Nashville, Tennessee 37249-1000, and in the Department of State, Publication Division, 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the 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 a copy of these proposed amendments, contact: Pat Wall, Staff Attorney, Tennessee Department of Safety Legal Division, 1150 Foster Avenue, Nashville, TN 37249, 615-251-5296.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1340-2-4-.09 is amended by adding new paragraph (6) at the end of paragraph (5).

- (6) Renewal of unexpired, valid permits by U.S. mail or overnight courier delivery service is permissible.

Authority: *T.C.A. § 39-17-1351; 39-17-1360 and 4-3-2009.*

Rule 1340-2-4-.12 is amended by deleting paragraph (4) in its entirety and inserting a new paragraph (4) as follows so that as amended, the rule shall read:

- (4) The acceptable method of payment for all initial fees will be by cash or certified check. Renewal fees may be paid by cash, personal check, or certified check.

Authority: *T.C.A. § 39-17-1351; 39-17-1360 and 4-3-2009.*

The proposed rules set out herein were properly filed in the Department of State on the 30th day of September, 2002, and pursuant to the instructions set out above, and in the absence of the filing of a petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-46)

**THE TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680
CENTRAL SERVICES DIVISION**

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

Presented herein are proposed amendments of the Tennessee Department of Transportation, Central Services Division, submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate this rule without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Tennessee Department of Transportation, Office of General Counsel, Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0332, and in the Department of State, Division of Publications, 312 Eight Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, TN 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of this rule contact John H. Reinbold, Tennessee Department of Transportation, Office of General Counsel, Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0332, Telephone: (615) 741-2941.

The text of the proposed amendment is as follows:

AMENDMENTS

Rule 1680-2-2-.15, Conditions for Movement of Manufactured Houses or Portable Modular Units, is amended by deleting the title of Rule 1680-2-2-.15 in the Table of Contents and substituting the words "Conditions for Permitting Movement of Mobile Homes, Manufactured Homes, Portable Modular Units or House Trailers" as the title, and it is further amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-2-2-.15 CONDITIONS FOR PERMITTING MOVEMENT OF MOBILE HOMES, MANUFACTURED HOMES, PORTABLE MODULAR UNITS OR HOUSE TRAILERS.

- (1) Application and Scope of Rule.
 - (a) Notwithstanding any other provision of this Chapter to the contrary, no mobile home, manufactured home, portable modular unit or house trailer as herein defined shall be moved into or through the State of Tennessee or upon the public roads or highways of this State unless and until the owner, operator or transporter thereof has obtained a permit as required under Tennessee Code Annotated, Title 55, Chapter 4, Part 4, and in accordance with the provisions of this Rule.
 - (b) A mobile home, manufactured home, portable modular unit or house trailer (hereinafter referred to collectively as a "mobile home") within the scope of this Rule shall include:
 1. Any self-propelled or non-self-propelled vehicle, with a length exceeding thirty-five feet (35'), so designed, constructed, reconstructed or added to by means of accessories in such manner as will permit the use thereof for human habitation, and so constructed to permit its being used as a conveyance upon public streets or highways; or
 2. Manufactured houses or portable modular units in excess of eight feet six inches (8'6") in width or when towing vehicle and manufactured home are in excess of sixty feet (60') in length.

- (c) The other provisions of this Chapter shall apply to the movement of a mobile home; provided, however, that in the event of any conflict between the specific provisions of this Rule and any other provisions of this Chapter, the specific provisions of this Rule shall govern.
- (2) General Permit Requirements.
- (a) Any permit required under this Rule shall be issued only in the name of the owner of the mobile home or in the name of the owner of the motor carrier used to transport the mobile home.
 - (b) The permit shall be displayed in the vehicle used to transport the mobile home so as to be visible from outside the vehicle, and it shall be produced for inspection upon request by a representative of any law enforcement agency.
 - (c) A permit shall be required for each category of size (height, width, length and/or weight) in which the mobile home exceeds the normal size limits as provided in Paragraphs (5) through (8) of this Rule.
- (3) Duration and Renewal of Permits.
- (a) Short-term permits shall be valid for a period of six (6) days from the date of issuance, unless suspended in accordance with this Rule. The date of issuance and the expiration date shall be indicated on the permit.
 - (b) Annual permits, where allowed, shall be valid for a period of three hundred and sixty-five (365) days from the date of issuance, unless suspended in accordance with this Rule. The date of issuance and the expiration date shall be indicated on the permit.
 - (c) Upon a sufficient showing that an otherwise valid permit has been lost or destroyed prior to its expiration date, the Department of Transportation shall issue a renewal permit in place of the original permit. The renewal permit shall be valid from the date of its issuance up to the expiration date of the original permit, unless suspended in accordance with this Rule. If a lost permit is subsequently found, it shall be deemed void and ineffective when a renewal permit has been issued in accordance with this subparagraph.
 - (d) It shall be unlawful, and a violation of the terms of a permit issued under this Rule, to display an expired, invalid or suspended permit or to display more than one permit bearing the same permit number.
- (4) Display of Placard.
- (a) The Department of Transportation shall issue to all annual permit holders a placard bearing the same annual permit number and a telephone number to be used to report unsafe or erratic driving to the Department. There shall be only one placard issued for each annual permit.
 - (b) The transporter of any mobile home being moved under an annual permit shall prominently display the applicable placard on the rear of the mobile home. The annual permit number displayed on the placard must match the permit number on the annual permit displayed in the transporting vehicle as provided in Subparagraph (2)(b) of this Rule; provided, however, that if an annual permit has been replaced by a renewal permit, as provided in Subparagraph (3)(c) of this Rule, the placard may continue to bear the original annual permit number.
 - (c) Upon a sufficient showing that an otherwise valid placard has been lost or destroyed, and upon the receipt of a fifty dollar (\$50.00) replacement fee, the Department of Transportation shall issue a

replacement placard bearing the same annual permit number as the original placard it replaces. If a lost placard is subsequently found, it shall be deemed void and ineffective when a replacement placard has been issued in accordance with this subparagraph. There shall be no reimbursement of the replacement fee.

- (d) Upon the expiration of an annual permit, the placard bearing that annual permit number shall also expire.
 - (e) It shall be unlawful, and a violation of the terms of a permit issued under this Rule, to display an expired, invalid or suspended placard or to display more than one placard bearing the same annual permit number.
 - (f) Failure to properly display a placard as required in Tennessee Code Annotated § 54-4-411, and in accordance with the provisions of this Paragraph, is a Class C misdemeanor punishable by a fine of fifty dollars (\$50.00).
- (5) Special Permit Requirements for Overlength Movements.
- (a) A special permit shall be required for the movement of any mobile home exceeding sixty feet (60') in length, including the towing vehicle; provided, however, that if the mobile home is being transported under a valid annual overwidth permit, as provided in Paragraph (6) of this Rule, an additional special overlength permit shall only be required if the mobile home exceeds ninety feet (90') in length, including the towing vehicle.
 - (b) A special overlength permit authorized under this Paragraph shall be issued only on a single trip basis under a short-term permit valid for a period not to exceed six (6) days.
 - (c) The fee for each special overlength permit issued under this Paragraph shall be twenty-five dollars (\$25.00).
 - (d) A special overlength permit issued under this Paragraph shall be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-2-2-.11 governing overlength movements in general.
- (6) Special Permit Requirements for Overwidth Movements.
- (a) A special permit shall be required for the movement of any mobile home exceeding eight feet six inches (8'6") in width.
 - (b) The movement of mobile homes exceeding 16 feet (16') in width shall not be permitted.
 - (c) Special overwidth permits authorized under this Paragraph may be issued on either a short-term basis for a period not to exceed six (6) days from the date of issuance or on an annual basis for a period not to exceed three hundred and sixty-five (365) days from the date of issuance.
 - (d) The fee schedule for each overwidth permit issued under this Paragraph shall be as follows:
 - 1. For mobile home widths from eight feet six inches (8'6") wide up to fourteen feet (14') wide:
 - (i) Short-term (6-day) permits: \$50.00

- (ii) Annual (365-day) permits: \$1,000.00
 - 2. For mobile home widths from eight feet six inches (8'6") wide up to sixteen feet (16') feet wide:
 - (i) Short-term (6-day) permits: \$100.00
 - (ii) Annual (365-day) permits: \$2,000.00
 - (e) A special overwidth permit issued under this Paragraph shall be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-2-2-.06 governing overwidth movements in general.
- (7) Special Permit Requirements for Overheight Movements.
- (a) A special permit shall be required for the movement of any mobile home exceeding fourteen feet two inches (14'2") in height.
 - (b) The movement of mobile homes exceeding 15 feet six inches (15' 6") in height shall not be permitted.
 - (c) A special overheight permit authorized under this Paragraph shall be issued only on a short-term basis for a period not to exceed six (6) days, and it shall be subject to special routing instructions approved by the Department of Transportation.
 - (d) Each permit authorized under this Paragraph shall also be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-2-2-.10 governing overheight movements in general.
 - (e) The fee for each overheight permit issued under this Paragraph shall be fifty dollars (\$50.00).
 - (f) The Department of Transportation shall make available, both in printed form and on the Department's official web site at www.tdot.state.tn.us, a list of overpasses on public roads within the State of Tennessee that have been identified as having a minimum vertical clearance above the roadway of less than fourteen feet six inches (14'6").
 - 1. This list shall be updated at least monthly on the Department's web site and at least annually in printed form. The Department shall charge a fee for the printed list sufficient to offset the administrative cost of compiling, updating, printing and shipping the list.
 - 2. The Department of Transportation makes no representations, and expressly disclaims any warranty, that the information it provides in any list of overpasses on public roads is current or accurate. The information provided in these lists is generated from bridge inspections conducted on a biennial basis. Actual vertical clearances may be subject to change beyond the control or knowledge of the Department, and the posted vertical clearances may vary from the information provided in the Department's list.
 - 3. At all times, the affirmative duty to determine that the route traveled will allow the safe passage of the mobile home shall remain with the transporter and/or seller of the mobile home, as provided in Paragraph (11) below, and nothing in this Paragraph or this Rule shall be construed as shifting this duty to the Department of Transportation.
- (8) Special Permit Requirements for Overweight Movements.

The movement of mobile homes shall be subject to other provisions of this Chapter pertaining to excess weight, including without limitation Rule 1680-2-2-.09.

(9) Timing of Movements.

- (a) The movement of mobile homes subject to this Rule shall be permitted only from sunrise to sunset, Monday through Saturday; provided, however, that movements of mobile homes shall not be permitted on legal holidays as enumerated in Tennessee Code Annotated § 15-1-101, including New Year's Day, Martin Luther King, Jr. Day, Washington Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.
- (b) Notwithstanding the provisions of Subparagraph (9)(a) of this Rule, the movement of mobile homes eighty-five feet (85') or greater in length, or fourteen feet (14') or greater in width, or fourteen feet two inches (14'2") or greater in height, is prohibited in heavily traveled urban areas between the hours of seven o'clock a.m. (7:00 a.m.) to nine o'clock a.m. (9:00 a.m.) and between the hours of four o'clock p.m. (4:00 p.m.) to six o'clock p.m. (6:00 p.m.).

(10) Safety Precautions and Equipment.

- (a) The transporter of any mobile home subject to this Rule shall at all times comply with applicable statutes, rules and ordinances governing the operation of motor vehicles on public roads and/or the maintenance of appropriate safety equipment on motor vehicles.
- (b) The transporter of a mobile home, and the seller of the mobile home if the seller is someone other than the transporter, shall have the affirmative duty to assure that the undercarriage for the mobile home is equipped with adequate brakes that are operated from the towing vehicle. This affirmative duty shall be primarily the transporter's duty; the seller shall be secondarily liable.
- (c) Any violation of the provisions of this Paragraph shall be deemed a violation of the terms of a permit, if any, issued under this Rule.

(11) Duty to Determine Safe Route for Movement.

- (a) Notwithstanding any other provision of this Rule, the transporter of a mobile home, and the seller of the mobile home if the seller is someone other than the transporter, shall have the affirmative duty to determine that the route over which the mobile home is to be transported allows for the safe passage of the mobile home, taking into account the size, including especially the height and width, of the mobile home. This affirmative duty shall be primarily the transporter's duty; the seller shall be secondarily liable.
- (b) The affirmative duty to determine that the route will allow safe passage of the mobile home, based on its height and width, may be met by the use of a front escort vehicle having protrusions equal to the height and width of the mobile home. It shall not be sufficient to meet this duty by relying on highway signs or other information regarding highway clearances that may be provided by the Department of Transportation or any local government.
- (c) At all times, the affirmative duty to determine that the route traveled will allow the safe passage of the mobile home shall remain with the transporter and/or seller of the mobile home, and nothing in this Rule shall be construed as shifting this duty to the Department of Transportation.

(12) Enforcement.

- (a) Section 55-4-412 of the Tennessee Code provides that any person who transports a mobile home, manufactured home, portable modular unit or house trailer, as defined in Tennessee Code Annotated § 55-4-402, over any public street, road or highway within the State of Tennessee in violation of the provisions of Title 55, Chapter 4, Part 4, of the Tennessee Code commits a Class B misdemeanor punishable as follows:
 - 1. By a fine of two hundred fifty dollars (\$250.00) for the first offense within a twelve (12) month period;
 - 2. By a fine of five hundred dollars (\$500.00) for the second offense within a twelve (12) month period; and
 - 3. By a fine of one thousand dollars (\$1,000.00) and a ninety (90) day revocation of any driver's license for the third or any subsequent offense within a twelve (12) month period.
- (b) Within thirty (30) days of conviction for a violation of the provisions of Title 55, Chapter 4, Part 4, as provided in Tennessee Code Annotated § 55-4-412, the clerk of the court of conviction shall give notice of such conviction to the Department of Transportation.
- (c) Upon receipt of notice of that a person has been convicted of a third violation within a twelve (12) month period, the Department of Transportation shall:
 - 1. Suspend the subject permit involved in the third violation; and
 - 2. Suspend the permit holder's privilege to obtain other permits under this Rule.
 - 3. These suspensions shall be effective for a period of ninety (90) days from the date on which the Department receives notice of the third violation; provided, however, that nothing in this subparagraph shall be construed as:
 - (i) Prohibiting multiple permit holders from using other valid permits not subject to suspension;
 - (ii) Prohibiting multiple permit holders from obtaining a short-term overheight or overlength permit, as provided in Paragraphs (5) and (7) of this Rule, to supplement an otherwise valid annual overwidth permit not subject to suspension; or
 - (iii) Prohibiting multiple permit holders from renewing an otherwise valid permit not subject to suspension, as provided in Subparagraph (3)(c) of this Rule.

(13) Liability.

- (a) The transporter of any mobile home subject to the provisions of this Rule shall be liable for any and all damages resulting from the mobile home striking a guardrail, bridge, concrete barrier, overhead structure or other obstruction while traveling on the public roads or highways of this State.
- (b) If during transport a mobile home subject to the provisions of this Rule blocks traffic on a controlled-access facility, as defined in Tennessee Code Annotated § 54-16-101, because such mobile home cannot proceed due to height, width or length, the transporter thereof shall be subject to the following:
 - 1. The transporter shall pay to the Department of Transportation a road user fee in the amount of one thousand dollars (\$1,000.00); and

2. The Department of Transportation shall suspend the subject permit involved in the incident and the permit holder's privilege to obtain other permits under this Rule for a period of ninety (90) days from the date the Department receives notice that the roadway was blocked; provided, however, that nothing in this part shall be construed as:
 - (i) Prohibiting multiple permit holders from using other valid permits not subject to suspension;
 - (ii) Prohibiting multiple permit holders from obtaining a short-term overheight or overlength permit, as provided in Paragraphs (5) and (7) of this Rule, to supplement an otherwise valid annual overwidth permit not subject to suspension; or
 - (iii) Prohibiting multiple permit holders from renewing an otherwise valid permit not subject to suspension, as provided in Subparagraph (3)(c) of this Rule.
- (c) If the same permit holder blocks traffic on a controlled-access facility a second time within eighteen (18) months after the date of the first such occurrence, the transporter shall be subject to the following:
 1. The transporter shall pay to the Department of Transportation a road user fee in an amount calculated by the Department using the same formula it uses to calculate incentive payments on road construction projects; and
 2. The Department of Transportation shall suspend the subject permit involved in the incident and the permit holder's privilege to obtain other permits under this Rule for a period of ninety (90) days, as provided in Part (b)2 of this Paragraph.
- (d) If the transporter fails to pay any road user fee required under this Paragraph within thirty (30) days of the date the road is blocked, the transporter's privilege to obtain permits under this Rule shall be suspended in all respects whatsoever until full payment is made. The Department is authorized to take legal action to collect the fee.
- (e) Any person or entity transporting a mobile home subject to the provisions of this Rule shall secure and maintain public liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence. Such insurance shall cover the tractor, mobile home and any other attachments thereto. Proof of such insurance shall be carried in the vehicle used to transport the mobile home, and satisfactory proof of such insurance shall be provided to the Department of Transportation prior to the issuance of any permit under this Rule.
- (f) Notwithstanding any other provision of law to the contrary, the State of Tennessee and any political subdivision thereof shall be absolutely immune from liability for all damages resulting from a mobile home striking a guardrail, bridge, concrete barrier, overhead structure or other obstruction while traveling on the public roads or highways of the State.

Authority: T.C.A. §§ 55-4-401 % 55-4-413; T.C.A. § 55-7-205.

The proposed rules set out herein were properly filed in the Department of State on the 30th day of September, 2002, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-47)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules dealing with Medicaid and TennCare programs, Chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2002) - Filed July 1, 2002; effective through December 13, 2002. (07-02)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules dealing with Medicaid and TennCare programs, Chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2002) - Filed July 1, 2002; effective through December 13, 2002. (07-01)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity rules concerning the Families First Program, chapter 1240-1-50 Standard of Need/Income, 8 T.A.R. (August 2002) - Filed July 3, 2002; effective December 15, 2002; effective through December 15, 2002. (07-03)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity rules concerning the Families First Program, chapter 1240-1-50 Standard of Need/Income, 8 T.A.R. (August 2002) - Filed July 8, 2002; effective December 15, 2002; effective through December 20, 2002. (07-06)

THE TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680 CENTRAL SERVICES DIVISION, PERMIT SECTION

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to Chapter 803 of the Public Acts of 2002, the Tennessee General Assembly amended and rewrote Tennessee Code Annotated, Title 55, Chapter 4, Part 4, relative to movements of manufactured homes on Tennessee highways (hereinafter referred to as "Part 4"). 2002 Tenn. Pub. Acts, Ch. 803, §§ 1-13, T.C.A. §§ 55-4-401 % 413 (as amended). The General Assembly has directed the Department of Transportation to administer the provisions of Part 4, and it has expressly authorized the Department to promulgate rules for this purpose. 2002 Tenn. Pub. Acts, Ch. 803, § 11, T.C.A. § 55-4-411 (as amended). The General Assembly has further provided that Chapter 803, including the amended provisions of Part 4 to be administered by the Department of Transportation, shall take effect on October 1, 2002. 2002 Tenn. Pub. Acts, Ch. 803, § 17. Therefore, in order to meet the General Assembly's directive to administer the amended provisions of Part 4 by the effective date of October 1, 2002, the Department of Transportation shall promulgate the following amendments to Chapter 1680-2-2 as public necessity rules to become effective as of October 1, 2002.

For a complete copy of the text of these public necessity rules, contact John H. Reinbold, Deputy General Counsel, Tennessee Department of Transportation, Suite 700, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0332, telephone number (615) 741-2941.

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF TRANSPORTATION
CENTRAL SERVICES DIVISION, PERMIT SECTION**

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

AMENDMENTS

Rule 1680-2-2-.15, Conditions for Movement of Manufactured Houses or Portable Modular Units, is amended by deleting the title of Rule 1680-2-2-.15 in the Table of Contents and substituting the words “Conditions for Permitting Movement of Mobile Homes, Manufactured Homes, Portable Modular Units or House Trailers” as the title, and it is further amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-2-2-.15 CONDITIONS FOR PERMITTING MOVEMENT OF MOBILE HOMES, MANUFACTURED HOMES, PORTABLE MODULAR UNITS OR HOUSE TRAILERS.

- (1) Application and Scope of Rule.
 - (a) Notwithstanding any other provision of this Chapter to the contrary, no mobile home, manufactured home, portable modular unit or house trailer as herein defined shall be moved into or through the State of Tennessee or upon the public roads or highways of this State unless and until the owner, operator or transporter thereof has obtained a permit as required under Tennessee Code Annotated, Title 55, Chapter 4, Part 4, and in accordance with the provisions of this Rule.
 - (b) A mobile home, manufactured home, portable modular unit or house trailer (hereinafter referred to collectively as a “mobile home”) within the scope of this Rule shall include:
 1. Any self-propelled or non-self-propelled vehicle, with a length exceeding thirty-five feet (35’), so designed, constructed, reconstructed or added to by means of accessories in such manner as will permit the use thereof for human habitation, and so constructed to permit its being used as a conveyance upon public streets or highways; or
 2. Manufactured houses or portable modular units in excess of eight feet six inches (8’6”) in width or when towing vehicle and manufactured home are in excess of sixty feet (60’) in length.
 - (c) The other provisions of this Chapter shall apply to the movement of a mobile home; provided, however, that in the event of any conflict between the specific provisions of this Rule and any other provisions of this Chapter, the specific provisions of this Rule shall govern.
- (2) General Permit Requirements.

- (a) Any permit required under this Rule shall be issued only in the name of the owner of the mobile home or in the name of the owner of the motor carrier used to transport the mobile home.
 - (b) The permit shall be displayed in the vehicle used to transport the mobile home so as to be visible from outside the vehicle, and it shall be produced for inspection upon request by a representative of any law enforcement agency.
 - (c) A permit shall be required for each category of size (height, width, length and/or weight) in which the mobile home exceeds the normal size limits as provided in Paragraphs (5) through (8) of this Rule.
- (3) Duration and Renewal of Permits.
- (a) Short-term permits shall be valid for a period of six (6) days from the date of issuance, unless suspended in accordance with this Rule. The date of issuance and the expiration date shall be indicated on the permit.
 - (b) Annual permits, where allowed, shall be valid for a period of three hundred and sixty-five (365) days from the date of issuance, unless suspended in accordance with this Rule. The date of issuance and the expiration date shall be indicated on the permit.
 - (c) Upon a sufficient showing that an otherwise valid permit has been lost or destroyed prior to its expiration date, the Department of Transportation shall issue a renewal permit in place of the original permit. The renewal permit shall be valid from the date of its issuance up to the expiration date of the original permit, unless suspended in accordance with this Rule. If a lost permit is subsequently found, it shall be deemed void and ineffective when a renewal permit has been issued in accordance with this subparagraph.
 - (d) It shall be unlawful, and a violation of the terms of a permit issued under this Rule, to display an expired, invalid or suspended permit or to display more than one permit bearing the same permit number.
- (4) Display of Placard.
- (a) The Department of Transportation shall issue to all annual permit holders a placard bearing the same annual permit number and a telephone number to be used to report unsafe or erratic driving to the Department. There shall be only one placard issued for each annual permit.
 - (b) The transporter of any mobile home being moved under an annual permit shall prominently display the applicable placard on the rear of the mobile home. The annual permit number displayed on the placard must match the permit number on the annual permit displayed in the transporting vehicle as provided in Subparagraph (2)(b) of this Rule; provided, however, that if an annual permit has been replaced by a renewal permit, as provided in Subparagraph (3)(c) of this Rule, the placard may continue to bear the original annual permit number.
 - (c) Upon a sufficient showing that an otherwise valid placard has been lost or destroyed, and upon the receipt of a fifty dollar (\$50.00) replacement fee, the Department of Transportation shall issue a replacement placard bearing the same annual permit number as the original placard it replaces. If a lost placard is subsequently found, it shall be deemed void and ineffective when a replacement placard has been issued in accordance with this subparagraph. There shall be no reimbursement of the replacement fee.
 - (d) Upon the expiration of an annual permit, the placard bearing that annual permit number shall also expire.

- (e) It shall be unlawful, and a violation of the terms of a permit issued under this Rule, to display an expired, invalid or suspended placard or to display more than one placard bearing the same annual permit number.
 - (f) Failure to properly display a placard as required in Tennessee Code Annotated § 54-4-411, and in accordance with the provisions of this Paragraph, is a Class C misdemeanor punishable by a fine of fifty dollars (\$50.00).
- (5) Special Permit Requirements for Overlength Movements.
- (a) A special permit shall be required for the movement of any mobile home exceeding sixty feet (60') in length, including the towing vehicle; provided, however, that if the mobile home is being transported under a valid annual overwidth permit, as provided in Paragraph (6) of this Rule, an additional special overlength permit shall only be required if the mobile home exceeds ninety feet (90') in length, including the towing vehicle.
 - (b) A special overlength permit authorized under this Paragraph shall be issued only on a single trip basis under a short-term permit valid for a period not to exceed six (6) days.
 - (c) The fee for each special overlength permit issued under this Paragraph shall be twenty-five dollars (\$25.00).
 - (d) A special overlength permit issued under this Paragraph shall be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-2-2-.11 governing overlength movements in general.
- (6) Special Permit Requirements for Overwidth Movements.
- (a) A special permit shall be required for the movement of any mobile home exceeding eight feet six inches (8'6") in width.
 - (b) The movement of mobile homes exceeding 16 feet (16') in width shall not be permitted.
 - (c) Special overwidth permits authorized under this Paragraph may be issued on either a short-term basis for a period not to exceed six (6) days from the date of issuance or on an annual basis for a period not to exceed three hundred and sixty-five (365) days from the date of issuance.
 - (d) The fee schedule for each overwidth permit issued under this Paragraph shall be as follows:
 1. For mobile home widths from eight feet six inches (8'6") wide up to fourteen feet (14') wide:
 - (i) Short-term (6-day) permits: \$50.00
 - (ii) Annual (365-day) permits: \$1,000.00
 2. For mobile home widths from eight feet six inches (8'6") wide up to sixteen feet (16') feet wide:
 - (i) Short-term (6-day) permits: \$100.00
 - (ii) Annual (365-day) permits: \$2,000.00
 - (e) A special overwidth permit issued under this Paragraph shall be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-2-2-.06 governing overwidth movements in general.

(7) Special Permit Requirements for Overheight Movements.

- (a) A special permit shall be required for the movement of any mobile home exceeding fourteen feet two inches (14'2") in height.
- (b) The movement of mobile homes exceeding 15 feet six inches (15' 6") in height shall not be permitted.
- (c) A special overheight permit authorized under this Paragraph shall be issued only on a short-term basis for a period not to exceed six (6) days, and it shall be subject to special routing instructions approved by the Department of Transportation.
- (d) Each permit authorized under this Paragraph shall also be subject to such additional conditions as are prescribed in applicable provisions of Rule 1680-2-2-.10 governing overheight movements in general.
- (e) The fee for each overheight permit issued under this Paragraph shall be fifty dollars (\$50.00).
- (f) The Department of Transportation shall make available, both in printed form and on the Department's official web site at www.tdot.state.tn.us, a list of overpasses on public roads within the State of Tennessee that have been identified as having a minimum vertical clearance above the roadway of less than fourteen feet six inches (14'6").
 - 1. This list shall be updated at least monthly on the Department's web site and at least annually in printed form. The Department shall charge a fee for the printed list sufficient to offset the administrative cost of compiling, updating, printing and shipping the list.
 - 2. The Department of Transportation makes no representations, and expressly disclaims any warranty, that the information it provides in any list of overpasses on public roads is current or accurate. The information provided in these lists is generated from bridge inspections conducted on a biennial basis. Actual vertical clearances may be subject to change beyond the control or knowledge of the Department, and the posted vertical clearances may vary from the information provided in the Department's list.
 - 3. At all times, the affirmative duty to determine that the route traveled will allow the safe passage of the mobile home shall remain with the transporter and/or seller of the mobile home, as provided in Paragraph (11) below, and nothing in this Paragraph or this Rule shall be construed as shifting this duty to the Department of Transportation.

(8) Special Permit Requirements for Overweight Movements.

The movement of mobile homes shall be subject to other provisions of this Chapter pertaining to excess weight, including without limitation Rule 1680-2-2-.09.

(9) Timing of Movements.

- (a) The movement of mobile homes subject to this Rule shall be permitted only from sunrise to sunset, Monday through Saturday; provided, however, that movements of mobile homes shall not be permitted on legal holidays as enumerated in Tennessee Code Annotated § 15-1-101, including New Year's Day, Martin Luther King, Jr. Day, Washington Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.
- (b) Notwithstanding the provisions of Subparagraph (9)(a) of this Rule, the movement of mobile homes eighty-five feet (85') or greater in length, or fourteen feet (14') or greater in width, or fourteen feet two

inches (14'2") or greater in height, is prohibited in heavily traveled urban areas between the hours of seven o'clock a.m. (7:00 a.m.) to nine o'clock a.m. (9:00 a.m.) and between the hours of four o'clock p.m. (4:00 p.m.) to six o'clock p.m. (6:00 p.m.).

(10) Safety Precautions and Equipment.

- (a) The transporter of any mobile home subject to this Rule shall at all times comply with applicable statutes, rules and ordinances governing the operation of motor vehicles on public roads and/or the maintenance of appropriate safety equipment on motor vehicles.
- (b) The transporter of a mobile home, and the seller of the mobile home if the seller is someone other than the transporter, shall have the affirmative duty to assure that the undercarriage for the mobile home is equipped with adequate brakes that are operated from the towing vehicle. This affirmative duty shall be primarily the transporter's duty; the seller shall be secondarily liable.
- (c) Any violation of the provisions of this Paragraph shall be deemed a violation of the terms of a permit, if any, issued under this Rule.

(11) Duty to Determine Safe Route for Movement.

- (a) Notwithstanding any other provision of this Rule, the transporter of a mobile home, and the seller of the mobile home if the seller is someone other than the transporter, shall have the affirmative duty to determine that the route over which the mobile home is to be transported allows for the safe passage of the mobile home, taking into account the size, including especially the height and width, of the mobile home. This affirmative duty shall be primarily the transporter's duty; the seller shall be secondarily liable.
- (b) The affirmative duty to determine that the route will allow safe passage of the mobile home, based on its height and width, may be met by the use of a front escort vehicle having protrusions equal to the height and width of the mobile home. It shall not be sufficient to meet this duty by relying on highway signs or other information regarding highway clearances that may be provided by the Department of Transportation or any local government.
- (c) At all times, the affirmative duty to determine that the route traveled will allow the safe passage of the mobile home shall remain with the transporter and/or seller of the mobile home, and nothing in this Rule shall be construed as shifting this duty to the Department of Transportation.

(12) Enforcement.

- (a) Section 55-4-412 of the Tennessee Code provides that any person who transports a mobile home, manufactured home, portable modular unit or house trailer, as defined in Tennessee Code Annotated § 55-4-402, over any public street, road or highway within the State of Tennessee in violation of the provisions of Title 55, Chapter 4, Part 4, of the Tennessee Code commits a Class B misdemeanor punishable as follows:
 - 1. By a fine of two hundred fifty dollars (\$250.00) for the first offense within a twelve (12) month period;
 - 2. By a fine of five hundred dollars (\$500.00) for the second offense within a twelve (12) month period; and
 - 3. By a fine of one thousand dollars (\$1,000.00) and a ninety (90) day revocation of any driver's license for the third or any subsequent offense within a twelve (12) month period.

- (b) Within thirty (30) days of conviction for a violation of the provisions of Title 55, Chapter 4, Part 4, as provided in Tennessee Code Annotated § 55-4-412, the clerk of the court of conviction shall give notice of such conviction to the Department of Transportation.
 - (c) Upon receipt of notice of that a person has been convicted of a third violation within a twelve (12) month period, the Department of Transportation shall:
 - 1. Suspend the subject permit involved in the third violation; and
 - 2. Suspend the permit holder's privilege to obtain other permits under this Rule.
 - 3. These suspensions shall be effective for a period of ninety (90) days from the date on which the Department receives notice of the third violation; provided, however, that nothing in this subparagraph shall be construed as:
 - (i) Prohibiting multiple permit holders from using other valid permits not subject to suspension;
 - (ii) Prohibiting multiple permit holders from obtaining a short-term overheight or overlength permit, as provided in Paragraphs (5) and (7) of this Rule, to supplement an otherwise valid annual overwidth permit not subject to suspension; or
 - (iii) Prohibiting multiple permit holders from renewing an otherwise valid permit not subject to suspension, as provided in Subparagraph (3)(c) of this Rule.
- (13) Liability.
- (a) The transporter of any mobile home subject to the provisions of this Rule shall be liable for any and all damages resulting from the mobile home striking a guardrail, bridge, concrete barrier, overhead structure or other obstruction while traveling on the public roads or highways of this State.
 - (b) If during transport a mobile home subject to the provisions of this Rule blocks traffic on a controlled-access facility, as defined in Tennessee Code Annotated § 54-16-101, because such mobile home cannot proceed due to height, width or length, the transporter thereof shall be subject to the following:
 - 1. The transporter shall pay to the Department of Transportation a road user fee in the amount of one thousand dollars (\$1,000.00); and
 - 2. The Department of Transportation shall suspend the subject permit involved in the incident and the permit holder's privilege to obtain other permits under this Rule for a period of ninety (90) days from the date the Department receives notice that the roadway was blocked; provided, however, that nothing in this part shall be construed as:
 - (i) Prohibiting multiple permit holders from using other valid permits not subject to suspension;
 - (ii) Prohibiting multiple permit holders from obtaining a short-term overheight or overlength permit, as provided in Paragraphs (5) and (7) of this Rule, to supplement an otherwise valid annual overwidth permit not subject to suspension; or
 - (iii) Prohibiting multiple permit holders from renewing an otherwise valid permit not subject to suspension, as provided in Subparagraph (3)(c) of this Rule.

- (c) If the same permit holder blocks traffic on a controlled-access facility a second time within eighteen (18) months after the date of the first such occurrence, the transporter shall be subject to the following:
 - 1. The transporter shall pay to the Department of Transportation a road user fee in an amount calculated by the Department using the same formula it uses to calculate incentive payments on road construction projects; and
 - 2. The Department of Transportation shall suspend the subject permit involved in the incident and the permit holder's privilege to obtain other permits under this Rule for a period of ninety (90) days, as provided in Part (b)2 of this Paragraph.
- (d) If the transporter fails to pay any road user fee required under this Paragraph within thirty (30) days of the date the road is blocked, the transporter's privilege to obtain permits under this Rule shall be suspended in all respects whatsoever until full payment is made. The Department is authorized to take legal action to collect the fee.
- (e) Any person or entity transporting a mobile home subject to the provisions of this Rule shall secure and maintain public liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence. Such insurance shall cover the tractor, mobile home and any other attachments thereto. Proof of such insurance shall be carried in the vehicle used to transport the mobile home, and satisfactory proof of such insurance shall be provided to the Department of Transportation prior to the issuance of any permit under this Rule.
- (f) Notwithstanding any other provision of law to the contrary, the State of Tennessee and any political subdivision thereof shall be absolutely immune from liability for all damages resulting from a mobile home striking a guardrail, bridge, concrete barrier, overhead structure or other obstruction while traveling on the public roads or highways of the State.

Authority: T.C.A. §§55-4-401 % 55-4-413; T.C.A. § 55-7-205.

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of September, 2002, and will be effective from October 1, 2002, for a period of 165 days. These public necessity rules will remain in effect through the 14th day of March, 2003. (09-48)

RULEMAKING HEARINGS

THE TENNESSEE STATE BOARD OF ACCOUNTANCY - 0020

There will be a hearing before the Tennessee State Board of Accountancy to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann § 68-105-116(a). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-202, and will take place in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 2:00 p.m. (Central Standard Time) on the 15th day of November, 2002.

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

For a copy of this notice of rulemaking hearing, contact: Darrel E. Tongate, Executive Director, State Board of Accountancy, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243, telephone (615) 741-2550.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0020-1

BOARD OF ACCOUNTANCY, LICENSING AND REGISTRATION REQUIREMENTS

AMENDMENTS

Chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements is amended by deleting the abbreviation "T.C.A." and the term "Tennessee Code Annotated" wherever they may appear and by substituting instead the abbreviation "Tenn. Code Ann."

Authority: *T.C.A. §62-1-105(e)(9).*

Subparagraph (g) of paragraph (1) of rule 0020-1-.01 Definitions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (g) shall read:

(g) "CPA" means "Certified Public Accountant" and shall be defined as in T.C.A. §62-1-103.

Authority: *T.C.A. §§62-1-103 and 62-1-105.*

Subparagraph (o) of paragraph (1) of rule 0020-1-.01 Definitions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (o) shall read:

(o) "PA" means "Public Accountant" and shall be defined as in T.C.A. §62-1-103.

Authority: *T.C.A. §§62-1-103 and 62-1-105.*

Rule 0020-1-.04 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:

0020-1-.04 FEES.

- (1) Fees charged by the Board shall be as follows:
 - (a) Initial issuance of certificate One hundred dollars (\$100.00)
 - (b) Replacement certificate Twenty-five dollars (\$25.00)
 - (c) Renewal of certificate or registration Fifty dollars (\$50.00) per year or one hundred dollars (\$100.00) biennially
 - (d) Initial firm permit Fifty dollars (\$50.00)
 - (e) Renewal of firm permit Fifty dollars (\$50.00) per year
 - (f) Penalty for late filing of permit, certificate or registration renewal application Fifty dollars (\$50.00) per year or part year
 - (g) Application for reinstatement Two hundred dollars (\$200.00), plus past due late fees and fifty dollar (\$50.00) penalty.
 - (h) Notification to the Board of intent to practice fee Fifty dollars (\$50.00) per year or part year
 - (i) Change of address late fee Twenty-five dollars (\$25.00)

Authority: T.C.A. §§62-1-105(e)(8), 62-1-107, 62-1-108 and 62-1-109.

0020-1-.06 Examinations 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:

0020-1-.06 EXAMINATIONS.

- (1) The examination of applicants for certification shall consist of the Uniform CPA Examination supplemented with a section on ethics prepared or approved by the Board. The examination may be further supplemented with other material which the Board in its discretion deems appropriate.
- (2) Notice of the date, time and place of the written examination shall be given at least ninety (90) days prior to each examination by publication in newspapers of general circulation in the cities of Memphis, Nashville, Knoxville and Chattanooga. After January, 2004, publication in the newspapers will no longer be required. Examinations may, in the discretion of the Board, be administered in more than one (1) city in the state.
- (3) The Board shall cause the examination for certification to be graded by the AICPA. The Board may recognize the grades assigned by the AICPA. Applicants may request a grade review if the Board permits such, and the applicant pays whatever administrative charges are assessed for a grade review.
- (4) If an exam is contested, the notification that the exam candidate receives for the grading of the examination shall control.

- (5) All examination candidates who take a written examination prior to January 2004 shall be required to pass all sections of the examination provided for in T.C.A. §62-1-106(d), in order to qualify for a certificate.
- (6) The following grading system shall apply to the written CPA examination until the last written exam in November, 2003:
 - (a) A passing grade for each section shall be seventy-five (75).
 - (b) If at a given sitting of the examination an applicant passes two (2) or more but not all sections, then the applicant shall be given credit for those sections that the applicant has passed and need not sit for reexamination in those sections, provided that:
 1. At that sitting the applicant wrote all sections of the examination for which the applicant does not have credit;
 2. The applicant attained a minimum grade of fifty (50) on each section taken at that sitting;
 3. The applicant passed the remaining sections of the examination within six (6) consecutive examinations given after the one (1) at which the first sections were passed;
 4. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections for which the applicant does not have credit; and
 5. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of fifty (50) on each section taken at that sitting.
- (7) An applicant shall be given credit for any and all sections of an examination passed in another state if such credit would have been given, under then applicable requirements, had the applicant taken the examination in this state.
- (8) The Board may in particular cases waive or defer any of the requirements of paragraphs (5), (6) and (7) regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet such requirement(s).
- (9) An applicant may be required to pass an examination covering the rules of ethics and professional conduct promulgated by the Board; such examination may be part of the examination required in T.C.A. §62-1-106(d) or may be in a separate examination.
- (10) The Board may provide for a third party administering the examination to charge each applicant a fee for each section of the examination or reexamination taken by the applicant.

Authority: T.C.A. §§62-1-105(e)(9), 62-1-106 and 2002 Tenn. Pub. Acts ch. 654 § § 4 and 5.

Paragraph (4) of rule 0020-1-.08 Renewal of Licenses is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (4) shall read:

- (4) When requested by the Board, applications for renewal of certificates or registrations shall be accompanied by evidence satisfactory to the Board that the applicant has complied with the continuing professional education requirements under T.C.A. §62-1-107(d) and Chapter 0020-5 of the Board's rules.

Authority: T.C.A. §§62-1-105, 62-1-107, 62-1-108, 62-1-109, 62-1-110 and 62-1-111.

Paragraph (1) of rule 0020-1-.10 Reinstatement of Revoked or Suspended Licenses is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (1) shall read:

- (1) A certified public accountant or public accountant whose license has been revoked, suspended or surrendered and who wishes to reinstate the license shall submit to the Board an application for reinstatement of such license accompanied by the appropriate fee.

Authority: T.C.A. §§62-1-105, 62-1-107 and 62-1-118.

Paragraph (3) of rule 0020-1-.13 Reciprocity and Substantial Equivalency is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (3) shall read:

- (3) Fees
 - (a) Individuals intending to practice public accountancy in Tennessee under T.C.A. §62-1-117 (Substantial Equivalency) shall make application and biennially file a notice of such intent with the Board or its designee, NASBA. The application to the Board's designee, NASBA, shall be accompanied by a nonrefundable fee of sixty-five dollars (\$65.00). The initial notice and each notice filed biennially thereafter shall be accompanied by the greater of a nonrefundable fee of thirty-five dollars (\$35.00) or an amount equal to that charged for the same privilege to the licensees of this state by the individual's state of licensure.
 - (b) An application for a reciprocal certificate shall be accompanied by a nonrefundable application fee of one hundred dollars (\$100.00).
 - (c) The fee for issuance of an initial reciprocal certificate shall be one hundred dollars (\$100.00).
 - (d) The fee for biennial renewal of a reciprocal certificate shall be one hundred dollars (\$100.00).
 - (e) Individual CPAs who are in good standing and are licensed in any other state may file a notification with the Board office of the intent to practice public accountancy in Tennessee in lieu of obtaining a license so long as the individual does not reside in Tennessee and pays the Board annually a fee, determined by the Board, for each year ending December 31st. Such individuals shall comply with the law and rules of Tennessee and are subject to disciplinary action by the Board.

Authority: T.C.A. §§62-1-105, 62-1-107, 62-1-110, 62-1-114 and 62-1-117.

CHAPTER 0020-2 EDUCATIONAL AND EXPERIENCE REQUIREMENTS

AMENDMENTS

Chapter 0020-2 Educational and Experience Requirements is amended by deleting the abbreviation "T.C.A." and the term "Tennessee Code Annotated" wherever they may appear and by substituting instead the abbreviation "Tenn. Code Ann."

Authority: T.C.A. §62-1-105(e)(9).

Rule 0020-2-.02 Education 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:

0020-2-.02 EDUCATION.

- (1) (a) For the purposes of T.C.A. §62-1-106(c), the education requirements for a CPA certificate, which must be met no later than the date of application for the first sitting for the Uniform CPA Examination, shall be a baccalaureate or higher degree which contains, as a minimum, one hundred fifty (150) semester hours or two hundred twenty-five (225) quarter hours from an accredited college or university (as specified in rule 0020-2-.01), which offers a baccalaureate degree, including a total education program with a concentration in accounting and general business as follows:
1. Twenty-four (24) semester or thirty-six (36) quarter hours in accounting education;
 2. Not more than three (3) semester or four (4) quarter hours may be internship programs which may be applied to the twenty-four (24) semester hours or thirty-six (36) quarter hours in accounting; and
 3. Twenty-four (24) semester or thirty-six (36) quarter hours in general business education in one (1) or more of the following:
 - (i) Algebra, Calculus, Statistics, Probability
 - (ii) Business Communication
 - (iii) Business Law
 - (iv) Economics
 - (v) Ethics
 - (vi) Finance
 - (vii) Management
 - (viii) Technology/Information Systems
- (b) 1. For purposes of this rule, accounting hours, other than elementary courses above the minimum requirement, may be substituted for general business education.
2. For purposes of this rule, candidates must have at least twelve (12) semester hours or eighteen (18) quarter hours of accounting education and at least twelve (12) semester or eighteen (18) quarter hours of general business courses at the upper division level.
3. For purposes of this rule, one (1) graduate hour from a recognized college or university will count as one and one half (1.5) credit hours.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-106.

Paragraph (1) of rule 0020-2-.03 Experience is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (1) shall read:

- (1) The experience required to be demonstrated for issuance of an initial certificate pursuant to T.C.A. §62-1-106(f) shall meet the requirements of this rule.

- (a) Experience may consist of providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills.
- (b) The applicant shall have his or her experience verified to the Board by a licensee as defined in the Act or a licensee from another state. Acceptable experience shall include employment in industry, government, academia or public practice. In evaluating experience, the Board shall consider factors that include complexity and diversity.
- (c) One (1) year of experience shall consist of full or part-time employment that extends over a period of no less than one (1) year and no more than three (3) years and includes no fewer than two thousand (2,000) hours of performance of services described in subparagraph (1)(a) above.
- (d) In accordance with T.C.A. §62-1-108(c)(2) any individual licensee who is responsible for supervising attest services and signs or authorizes another person to sign the accountant's report on the financial statements on behalf of the firm, shall meet professional competency requirements and shall have no less than two (2) years of experience satisfactory to the Board in the preparation of financial statements or reports on financial statements.
- (e) Experience must be earned within the ten (10) year period immediately preceding the latest application for a certificate under the Act.

Authority: T.C.A. §§62-1-105(e)(3), 62-1-106, 62-1-107 and 62-1-108.

CHAPTER 0020-3

RULES OF PROFESSIONAL CONDUCT

AMENDMENTS

Chapter 0020-3 Rules of Professional Conduct is amended by deleting the abbreviation "T.C.A." and the term "Tennessee Code Annotated" wherever they may appear and by substituting instead the abbreviation "Tenn. Code Ann.".

Authority: T.C.A. §62-1-105(e)(9).

Rule 0020-3-.03 Independence 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:

RULE 0020-3-.03 INDEPENDENCE.

- (1) A licensee shall not perform attest services in such a manner as to imply that he or she is acting as an independent accountant with respect thereto unless he or she is independent with respect to such enterprise. Impairment of independence includes but is not limited to the following:
 - (a) During the period of a professional engagement, or at the time of expressing an opinion, the licensee:
 - 1. Has or was committed to acquire any direct or material indirect financial interest in the enterprise;
 - 2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise;

3. Had a joint closely-held business investment with the enterprise or any officer, director, or principal stockholder thereof which was material in relation to the net worth of either the licensee or the licensee's firm; or
 4. Had any loan to or from the enterprise of any officer, director, or principal stockholder of the enterprise except as specifically permitted in rule 0020-3-03(2).
- (b) During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:
1. Was connected with the enterprise as a promoter, underwriter, or voting trustee, as a director or officer, or in any capacity equivalent to that of a member of management or of an employee; or
 2. Was a trustee for any pension or profit-sharing trust of the enterprise.
- (2) (a) This paragraph grandfathers the following types of loans obtained from a financial institution under that institution's normal lending procedures, terms, and requirements, and that meet the conditions specified in (2)(b) below:
1. Home mortgages.
 2. Other secured loans. The collateral on such loans must equal or exceed the remaining balance of the loan on January 1, 1992, and at all times thereafter.
 3. Loans not material to the CPA's or PA's net worth, which are not to exceed five percent (5%) of his or her net worth.
- (b) In order to be deemed to have met the provisions of (2)(a) above, the loan must:
1. Have existed as of January 1, 1992;
 2. Have been obtained from a financial institution prior to its becoming a client requiring independence;
 3. Have been obtained from a financial institution for which independence was not required and was later sold to a client for which independence is required; or
 4. Have been obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a CPA with respect to such client.
- (c) Independence will be considered to be impaired if, after January 2, 1992, a licensee obtains a loan of the type described in the (2)(b) above from an entity that, at the time of obtaining the loan, is a client requiring independence. These loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates set out in (2)(b) above.
- (3) This paragraph permits the following types of personal loans obtained from a financial institution client for which independence is required under that institution's normal lending procedures, terms, and requirements. Such loans must, at all times, be current as to all terms.
- (a) Automobile loans and leases collateralized by the automobile.
 - (b) Loans of the surrender value under the terms of an insurance policy.

- (c) Borrowing fully collateralized by cash deposits at the same financial institution (e.g., “passbook loans”).
 - (d) Credit cards and cash advances on checking accounts with an aggregate balance not paid currently of five thousand dollars (\$5,000) or less.
- (4) A certificate holder, licensee or registration holder in the performance of professional services, including those who are not members of the AICPA, shall conform to the independence standards established by the Board and the AICPA, and where applicable, the United States Securities and Exchange Commission, the General Accounting Office and other regulatory or professional standards setting bodies.

Authority: *T.C.A. §§62-1-105(e)(4) and 62-1-111.*

Rule 0020-3-.11 Records 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:

0020-3-.11 RECORDS.

- (1) A licensee shall, upon request made within a reasonable time, furnish to his or her client or former client:
 - (a) A copy of any report or other records belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client’s account, but the licensee may make and retain copies of such documents when they form the basis for work performed by him;
 - (b) Any accounting or other records belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client’s premises or received from the client’s account, but the licensee may make and retain copies of such documents when they form the basis for work performed by him; and
 - (c) A copy of the licensee’s working papers, to the extent that such working papers include records which would ordinarily constitute part of the client’s books and records and are not otherwise available to the client. Provided, however, that nothing in this rule shall require a licensee to furnish any work product to his or her client or others before the client has made satisfactory arrangements for payment for services rendered to or on behalf of such client.
- (2) A licensee shall maintain copies, or other obtainable facsimile records, or computer records, in whatever manner kept, of all workpapers and work product used to render or support rendering public accounting services to a client for a period of five (5) years. The five (5) year period shall commence at the end of the fiscal period in which the engagement was conducted. Premature destruction of these records shall subject the licensee to disciplinary action.

Authority: *T.C.A. §§62-1-105(e)(4), 62-1-111 and 62-1-115.*

CHAPTER 0020-5

CONTINUING EDUCATION

AMENDMENTS

Chapter 0020-5 Continuing Education is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and by substituting instead the abbreviation “Tenn. Code Ann.”.

Authority: T.C.A. §62-1-105(e)(9).

Rule 0020-5-.03 Basic Requirements 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:

RULE 0020-5-.03 BASIC REQUIREMENTS.

- (1) A license holder seeking regular biennial renewal shall, as a prerequisite for such renewal, certify that he or she has completed at least eighty (80) hours of qualified continuing professional education during the immediately preceding two (2) year period, with no less than twenty (20) hours of the required eighty (80) hours to have been completed in each year of the period. In addition:
 - (a) All license holders shall complete at least forty (40) hours of the required eighty (80) hours in the subject areas of accounting, accounting ethics, attest, taxation or management advisory services;
 - (b) License holders engaged in the attest function, shall biennially complete at least twenty (20) hours of attest and accounting theory and practice in fulfilling the above requirements;
 - (c) License holders engaged to testify in a Tennessee court as expert witnesses in the areas of accounting, attest, management advisory services or tax shall have completed, within the current or most recent renewal period, at least twenty (20) hours in the subject area(s) (as noted in this paragraph) concerning such expert testimony; and
 - (d) Up to forty (40) CPE hours taken in excess of the eighty (80) hour requirement for each two (2) year period may be applied to the requirement of the next succeeding two (2) year renewal cycle. The forty (40) CPE hours in excess of the eighty (80) hour requirement shall not count toward the minimum twenty (20) hours required in each year of the period.
- (2) A license holder seeking to renew an initial certificate issued less than two (2) years but more than one (1) year prior to expiration must provide evidence of having completed at least forty (40) hours of continuing education, of which twenty (20) hours shall be in the subject areas of accounting, attest, tax or management advisory services.
- (3) Upon application supported by such evidence as the Board may require, those licensees who do not perform or offer to perform for the public one (1) or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or one (1) or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, may be exempted from any continuing professional education requirements provided that:
 - (a) Licensees shall make written request and submit the required paperwork to the Board for approval to be placed in inactive status. Licensees granted such an exemption shall place the word “inactive” adjacent to their CPA title or PA title when used in any written form with the exception of their certificate or registration;
 - (b) Those individuals who are inactive and have reached fifty-five (55) years of age may substitute the word “retired” for the word “inactive”;
 - (c) Individuals exempt under this paragraph must complete eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation or management advisory services, during the twenty-four (24) month period preceding the date of their request for the reactivation of his or her license.

- (4) Upon application supported by such evidence as the Board may require, licensees aged seventy (70) and over, disabled for more than six (6) months or in active military service may be exempted from payment of a license renewal fee and/or CPE requirement so long as they do not practice public accountancy or offer accounting services to the public.
- (5) An applicant for renewal whose license has lapsed as set forth under rule 0020-1-.08(9) shall complete no less than eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation or management advisory services, during the six (6) month period immediately preceding the date of reapplication.
- (6) A non-resident licensee seeking renewal of a license in this state shall meet the CPE requirement of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal office is located.
 - (a) Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal office is located by signing a statement certifying to that effect on the renewal application of this state.
 - (b) If the state in which a non-resident licensee's principal office is located has no CPE requirements for renewal of a license, the non-resident licensee must comply with all CPE requirements for renewal of a license in this state.

Authority: T.C.A. §§62-1-105(e)(3), 62-1-107 and 62-1-111.

Paragraph (4) of rule 0020-5-.04 Qualifying Programs is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (4) shall read:

- (4) Formal correspondence or other individual study programs, including those administered via computer, which require registration and provide evidence of satisfactory completion, may qualify for continuing education credit. The number of credit hours of continuing education will be determined by the Board. Such programs taken after January 1, 1999, excluding those offered by the AICPA and state CPA societies, must be approved by the Board or its designee, NASBA's Quality Assurance Program.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-107.

Rule 0020-5-.06 Control and Reporting System 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:

0020-5-.06 CONTROL AND REPORTING SYSTEM.

- (1) Each license holder shall biennially, when making application for license renewal, submit on the prescribed form a signed statement setting forth the number of continuing education hours which he or she has completed during the reporting period. Such license holder shall retain documentation supporting such statement for at least five (5) years subsequent to the date of submission.
- (2) The Board will verify information submitted by license holders under this rule on a random basis.
- (3) If any continuing education hours claimed in a statement submitted by a license holder pursuant to paragraph (1) of this rule are disapproved, the Board shall notify such license holder of the reason for disapproval. The Board may allow a specified period of time, up to six (6) months, for correction of the deficiencies noted.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-107.

Rule 0020-5-.07 Extension of Time 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:

0020-5-.07 EXTENSION OF TIME.

- (1) The Board may, upon written request, extend the time, up to six (6) months, within which license holders must comply with the requirements of this Chapter for reasons of poor health, military service, or other reasonable and just causes.
- (2) Any license holder who requests or is granted an extension of time under this rule shall remain subject to rule 0020-5-.06, and shall note such extension on any report required thereunder.
- (3) Request for extension under this rule will be automatically denied if filed later than the December 31st biennial renewal deadline established by these rules.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-107.

CHAPTER 0020-6

PEER REVIEW PROGRAM

AMENDMENTS

Chapter 0020-6 Peer Review Program is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and by substituting instead the abbreviation “Tenn. Code Ann.”.

Authority: T.C.A. §62-1-105(e)(9).

Rule 0020-6-.01 Definitions 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:

0020-6-.01 DEFINITIONS.

- (1) For purposes of this Chapter, unless the context otherwise requires:
 - (a) “Approved peer review program” means any peer review program conducted by the Board, the Tennessee Society of Certified Public Accountants, AICPA or any other similar program conducted by another individual or entity approved by the Board;
 - (b) “Licensee” means certified public accountant or public accountant;
 - (c) “Firm” means CPA firm and PA firm as defined in T.C.A. §62-1-103;
 - (d) “Firm location” means an individual office location of a firm;
 - (e) “Peer Review” shall be defined as in T.C.A. §62-1-103.

Authority: T.C.A. §§62-1-105(e)(6) and 62-1-201.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-49)

BOARD OF CHIROPRACTIC EXAMINERS - 0260

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, 63-4-119, and 63-4-123. 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 18th day of November, 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, 1st Floor, Cordell Hull Bldg., 425 5th Ave. N., Nashville, TN 37247 1010, (615) 532 4397.

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0260-3-.03 Necessity of Certification, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (2) and (3) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs (1), (2), and (3) shall read:

- (1) Except as provided in paragraphs (2) and (3), prior to engaging in practice as a chiropractic x-ray technologist in Tennessee, a person must hold a current Tennessee certification.
- (2) Students engaged in clinical internship are exempt from the certification requirements.
- (3) Graduates of a Board approved radiological education course who have completed their clinical internship and are awaiting examination are exempt from the certification requirements, but only for a period not to exceed six (6) months from the date that the course and training were completed. After sitting for the examination this exemption shall continue for a period not to exceed seventy-five (75) days. At all times while awaiting examination or examination results and until certification is received, graduates shall practice only under supervision as set forth in rule 0260-3-.10.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-119.

Rule 0260-3-.04 Qualifications for Certification, is amended by deleting the introductory language in its entirety 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 paragraphs (1), (2), (3), and (4) shall read:

- (1) To become certified as a chiropractic x-ray technologist in Tennessee, a person must comply with the following procedures and requirements prior to submitting an application:
 - (a) Be at least eighteen (18) years of age.
 - (b) Be of good moral character.

- (c) Be a high school graduate or equivalent.
 - (d) Complete prior to the date of examination a minimum combined total of forty eight (48) classroom hours approved by the board and which includes such subject material as radiation protection, radiation physics, radiographic techniques, patient care and positioning, equipment maintenance, radiographic anatomy and physiology, x-ray quality control, and instruction on Tennessee statutes and rules pertaining to the chiropractic x-ray technologist.
 - (e) Provide proof of one thousand and forty (1,040) hours of clinical internship completed prior to the date of examination and supervised by a Tennessee licensed doctor of chiropractic who is required to provide the Board of Chiropractic Examiners a report concerning the certificate holder's performance in each area of the spine and extremities on forms provided by the board to become certified as a chiropractic x-ray technologist.
 - (f) Pass to the satisfaction of the board an examination conducted to determine fitness for practice as an x-ray technologist under the supervision of a licensed chiropractic physician pursuant to rule 0260-3-.08.
- (2) To become certified as a chiropractic x-ray technologist in Tennessee by Criteria (Reciprocity based on licensure in another state), a person must comply with the following procedures and requirements prior to submitting an application:
- (a) Be at least 18 years of age.
 - (b) Be of good moral character.
 - (c) Be a high school graduate or equivalent.
 - (d) An applicant requesting certification must be duly licensed or certified in another state as a chiropractic x-ray technologist.
 - (e) Provide either;
 - 1. a letter of good standing from the state in which certification is held; or
 - 2. provide to the board's administrative office evidence of certification from either the American Chiropractic Registry of Radiological Technologists or the American Registry of Radiological Technologists, either of which will qualify an applicant for chiropractic x-ray technologist certification.
- (3) If an applicant holds or possesses an unencumbered certificate to practice radiography that has been granted by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination in the limited specialty category of "Lumbar Spine – AP/PA and Lateral Lumbar Spine only," a certification by Criteria (Reciprocity based on another profession) to practice as a chiropractic x-ray technologist may be granted.
- (4) Application review and certification decisions shall be governed by rule 0260-3-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-4-106, and 63-4-119.

Rule 0260-3-.05 Procedures for Certification, is amended by deleting paragraph (1) but not its subparagraphs, and is further amended by deleting subparagraphs (1) (e) and (2) (b) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs, and the new subparagraphs (1) (e) and (2) (b) shall read:

- (1) Certification
 - (1) (e) It is the applicant's responsibility to provide evidence that he/she has completed the requirements of rule 0260-3-.04 (1).
 - (2) (b) If a certificate is not in good standing or is inactive, before becoming certified, the applicant must, conform to rule 0260-3-.04 (1) (e) and upon satisfactory proof as attested by the supervising doctor's signature on a form provided by the board, the applicant will be certified.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-4-106, and 63-4-119.

Rule 0260-3-.08 Examination, is amended by deleting paragraphs (1), (2), and (3) in their entirety, and is further amended by adding the following language immediately after the catchline, so that as amended, the new language immediately following the catchline shall read:

0260-3-.08 EXAMINATION. Applicants for certification will be required to successfully complete the general "core" examination of the American Registry of Radiologic Technologists (A.R.R.T.) with a minimum score of sixty-five percent (65%) and the limited scope "spine" examination of the A.R.R.T. with a minimum score of sixty-five percent (65%).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-119.

Rule 0260-3-.12 Continuing Education, is amended by deleting subparagraphs (2) (a), (2) (b), (2) (c), and (2) (d) in their entirety and is further amended by adding the following language as new subparagraphs (2) (a), (2) (b), and (2) (c):

- (2) (a) New technologist certification - Submitting proof of successful completion of all education and examination requirements necessary for certification in Tennessee, pursuant to paragraph 0260-3-.04 (1) and rule 0260-3-.08, shall be considered proof of sufficient preparatory education and training to constitute continuing education credit for the calendar year in which the applicant is approved for certification.
- (2) (b) New certification by criteria (reciprocity based on licensure in another state) - Submitting proof of successful completion of all requirements necessary for certification in Tennessee, pursuant to paragraph 0260-3-.04 (2), shall be considered proof of sufficient preparatory education and training to constitute continuing education credit for the calendar year in which education and training requirements for licensure in another state were completed.
- (2) (c) New certification by criteria (reciprocity based on another profession) - Submitting proof of successful completion of all requirements necessary for certification in Tennessee, pursuant to paragraph 0260-3-.04 (3), shall be considered proof of sufficient preparatory education and training to constitute continuing education credit for the calendar year in which such education and training requirements for certification to practice radiography were completed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-119.

Rule 0260-5-.01 Definitions, is amended by deleting paragraph (17), the definition for proficiency certification, in its entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

Rule 0260-5-.03 Necessity of Certification, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (2) and (3) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs (1), (2), and (3) shall read:

- (1) Except as provided in paragraphs (2) and (3), prior to engaging in practice as a chiropractic therapy assistant in Tennessee, a person must hold a current Tennessee certification.
- (2) Students engaged in clinical internship are exempt from the certification requirements.
- (3) Graduates of a Board approved chiropractic therapy assistant course who have completed their clinical internship and are awaiting examination are exempt from the certification requirements, but only for a period not to exceed six (6) months from the date that the course and training were completed. After sitting for the examination this exemption shall continue for a period not to exceed seventy-five (75) days. At all times while awaiting examination or examination results and until certification is received, graduates shall practice only under supervision as set forth in rule 0260-5-.10.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

Rule 0260-5-.04 Qualifications for Certification, is amended by deleting the introductory language in its entirety 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 deleting paragraph (4) in its entirety, so that as amended, the new paragraphs (1), (2), and (3) shall read:

- (1) To become certified as a chiropractic therapy assistant in Tennessee, a person must comply with the following procedures and requirements prior to submitting an application:
 - (a) Be at least eighteen (18) years of age.
 - (b) Be of good moral character.
 - (c) Be a high school graduate or equivalent.
 - (d) Complete prior to the date of examination a minimum combined total of fifty (50) hours of instruction approved by any board member or board designee, subject to full board approval, and which shall include but not be limited to such subject material as anatomy, physiology, patient protection, safety, emergency procedures, professional boundaries training, chiropractic therapy, and rehabilitation techniques.
 - (e) Provide proof of twelve hundred (1,200) hours of clinical internship under direct supervision. The supervisor is required to provide the Board of Chiropractic Examiners a report concerning the certificate holder's performance in each area of internship on forms provided by the board to become certified as a chiropractic therapy assistant.
 - (f) Pass to the satisfaction of the board an examination conducted to determine fitness for practice as a chiropractic therapy assistant intern under direct supervision pursuant to rule 0260-5-.08.
- (2) To become certified as a chiropractic therapy assistant in Tennessee by Criteria (Reciprocity/Endorsement), a person must comply with the following procedures and requirements prior to submitting an application:
 - (a) Be at least 18 years of age.

- (b) Be of good moral character.
 - (c) Be a high school graduate or equivalent.
 - (d) An applicant requesting certification by criteria (reciprocity/endorsement) must be duly licensed or certified as a chiropractic therapy assistant in another state, or hold certification with minimum equivalent training as determined by the Board. A designee of the Board will approve all endorsement applications to ensure minimum equivalency.
 - (e) A letter of good standing must be provided from the state or board in which certification is held along with licensure criteria and educational training to ensure minimum equivalency.
- (3) Application review and certification decisions shall be governed by rule 0260-5-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

Rule 0260-5-.05 Procedures for Certification, is amended by deleting paragraph (1) but not its subparagraphs, and is further amended by deleting subparagraphs (1) (e) and (2) (k) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs, and the new subparagraphs (1) (e) and (2) (k) shall read:

- (1) Certification
 - (1) (e) It is the applicant's responsibility to provide evidence that he/she has completed the requirements of rule 0260-5-.04(1).
 - (2) (k) It is the applicant's responsibility to provide evidence that he/she has completed a minimum combined total of fifty (50) hours of education approved by the board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

Rule 0260-5-.08 Examination, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (3) and (4) in their entirety, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) State Board Examination - Applicants for certification will be required to successfully complete a board-approved examination with a minimum score of seventy-five (75).
- (2) Examinations and re-examinations may be performed by a testing center or may be delegated as determined by the board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

Rule 0260-5-.11 Retirement and Reactivation of Certificate, is amended by deleting subparagraph (3) (c) in its entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

Rule 0260-5-.12 Continuing Education, is amended by deleting subparagraphs (2) (a), (2) (b), (2) (c), and (2) (d) in their entirety and is further amended by adding the following language as new subparagraphs (2) (a) and (2) (b):

- (2) (a) New chiropractic therapy assistant certification - Submitting proof of successful completion of all education and examination requirements necessary for certification in Tennessee, pursuant to paragraphs 0260-5-.04 (1) and 0260-5-.08 (1), shall be considered proof of sufficient preparatory education and training to constitute continuing education credit for the calendar year in which the applicant is approved for certification.
- (2) (b) New certification by criteria (reciprocity/endorsement) - Submitting proof of successful completion of all requirements necessary for certification in Tennessee, pursuant to paragraph 0260-5-.04 (2), shall be considered proof of sufficient preparatory education and training to constitute continuing education credit for the calendar year in which education and training requirements for certification in another state were completed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-106, and 63-4-123.

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of September, 2002. (09-63)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-24, pursuant to T.C.A. § 56-1-701. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in Conference Room A, Fifth Floor, of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 19th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact Kevin C. Bartels, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-24
RULES AND REGULATIONS GOVERNING THE REPLACEMENT OF
LIFE INSURANCE POLICIES**

AMENDMENTS

Chapter 0780-1-24 Rules and Regulations Governing the Replacement of Life Insurance Policies is amended by deleting the title and language contained therein and substituting instead the following language so that, as amended, the new Chapter shall read:

RULES GOVERNING THE REPLACEMENT OF LIFE INSURANCE POLICIES

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<p>0780-1-24-.01 Purpose.</p> <p>0780-1-24-.02 Definition of Replacement Transaction.</p> <p>0780-1-24-.03 Other Definitions.</p> <p>0780-1-24-.04 Exemptions.</p> <p>0780-1-24-.05 Duties of Insurance Producers.</p> <p>0780-1-24-.06 Duties of All Insurers.</p> <p>0780-1-24-.07 Duties of Insurers Who Employ, Utilize or Contract with Insurance Producers.</p>	<p>0780-1-24-.08 Duties of Insurers with Respect to Direct Response Sales.</p> <p>0780-1-24-.09 Penalties.</p> <p>0780-1-24-.10 Severability.</p> <p>0780-1-24-.11 Effective Date.</p> <p>Exhibit A</p>
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0780-1-24-.01 PURPOSE. The purpose of this Chapter is:

- (1) To regulate the activities of insurers and insurance producers with respect to the replacement of existing life insurance.
- (2) To protect the interests of the public and policyholders by establishing minimum standards of conduct to be observed in replacement transactions by:
 - (a) Assuring that purchasers of life insurance policies receive information with which a decision can be made in his or her own best interest;
 - (b) Reducing misrepresentation and incomplete disclosures that are made by any person in connection with the sale and/or replacement of life insurance policies; and
 - (c) Establishing penalties for failure to comply with requirements of this Chapter.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§13 and 25.

0780-1-24-.02 DEFINITION OF REPLACEMENT TRANSACTION. “Replacement transaction” means any transaction in which new life insurance is to be or is proposed to be purchased and it is known or should be known to the insurance producer and/or to the insurer or to the proposing insurer, if there is no insurance producer, through the exercise of reasonable due diligence that, due to such transaction, an insured’s existing life insurance has been or is to be:

- (1) Lapsed, forfeited, surrendered, or otherwise terminated;
- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or

- (5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

Authority: T.C.A. §§56-3-301 and 56-3-508.

0780-1-24-.03 OTHER DEFINITIONS.

- (1) "Applicant" shall mean any person who applies for coverage under a life insurance policy.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or his/her designee.
- (3) "Conservation" means any attempt by the existing insurer or by an insurance producer to dissuade a policyholder from the replacement of existing life insurance. Conservation does not include routine administrative procedures such as late payments, reminders, late payment offers or reinstatement offers.
- (3) "Department" means the Tennessee Department of Commerce and Insurance.
- (4) "Direct-response sales" means any sale of life insurance where the insurer does not utilize an insurance producer in the sale or delivery of the policy.
- (5) "Existing insurer" means the insurer whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."
- (6) "Existing life insurance" means any life insurance in force, including life insurance under a binding or conditional receipt or a life insurance policy that is within an unconditional refund period.
- (7) "Group life insurance" means that form of life insurance:
 - (a) covering not less than ten (10) employees with or without medical examination;
 - (b) written under a policy issued to the employer, or to a trustee of a trust created by such employer;
 - (c) the premium on which is to be paid by the employer, by the employer and employees jointly, or by such trustee out of funds contributed by the employer or by the employer and employees jointly;
 - (d) insuring only all of the employer's employees or all of any classes thereof, determined by sex, age, or conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection;
 - (e) for the benefit of persons other than the employer; provided that
 - (f) such group policy may provide that "employees" includes retired employees of the employer and the officers, managers, employees, and retired employees of subsidiary or affiliated corporations and the individual proprietors, partners, employees, and retired employees of affiliated individuals and firms, when the business of such subsidiary or affiliated corporations, firms, or individuals is controlled by the common employer through stock ownership, contract, or otherwise.

- (8) "Insurer" shall have the same meaning as defined in T.C.A., Title 56, Chapter 6, Part 1.
- (9) "Insurance producer" shall have the same meaning as defined in T.C.A., Title 56, Chapter 6, Part 1.
- (10) "Person" shall mean any individual or business entity.
- (11) "Replacing insurer" means the insurer that issues or proposes to issue a new policy or contract which is a replacement or existing life insurance.
- (12) "Registered contract" means variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are appropriately registered with the U.S. Securities and Exchange Commission.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§13 and 25.

0780-1-24-.04 EXEMPTIONS. Unless exempted by (1) through (6) below, this rule shall apply in any replacement transaction involving annuities, except for those provisions which require the completion of a policy summary or ledger statement as set forth in Chapter 0780-1-40.

- (1) Credit life insurance, as this term is defined in T.C.A. § 56-2-201(3)(B);
- (2) Group life insurance, as defined in this chapter;
- (3) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised;
- (4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- (5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, insurance producers proposing replacement shall comply with the requirements of rule 0780-1-24-.05(1); and
- (6) Registered Contracts shall be exempt from the requirements of rule 0780-1-24-.07(2)(b) and rule 0780-1-24-.07(2)(c) requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§13 and 25.

0780-1-24-.05 DUTIES OF INSURANCE PRODUCERS.

- (1) Each insurance producer who initiates an application for a replacement transaction shall submit to the insurer to which an application for life insurance is presented, with or as part of each application:
 - (a) A statement signed by the applicant as to whether or not replacement of existing life insurance is involved in the transaction; and
 - (b) A signed statement as to whether or not the insurance producer knows replacement is or may be involved in the transaction.

- (2) Where a replacement is involved, the insurance producer shall:
- (a) Present to the applicant, no later than at the time of taking the application, a “Notice Regarding Replacement” (“Notice”) in the form as described in Exhibit A, or other substantially similar form that has been approved by the Commissioner prior to the submission of such application to any insurer. The Notice shall be signed by both applicant and the insurance producer and left with the applicant.
 - (b) Obtain with or as part of each application a list of all existing life insurance to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
 - (c) Furnish the applicant with the original(s) or copies of any and all written or printed communications used for the presentation.
 - (d) Submit to the replacing insurer with the application a copy of the Notice provided pursuant to rule 0780-1-24-.05(2)(a).

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§13 and 25.

0780-1-24-.06 DUTIES OF ALL INSURERS. Every insurer shall:

- (1) Inform its insurance producers and other personnel responsible for sales of life insurance policies of the requirements of this rule by means of a printed or electronically disseminated communication, a copy of which shall be furnished to the Commissioner prior to its dissemination and which shall be updated by the insurer on an annual basis.
- (2) Require with or as a part of each completed application for life insurance a statement signed by the applicant as to whether or not such proposed insurance will replace existing life insurance.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-24-.07 DUTIES OF INSURERS WHO EMPLOY, UTILIZE OR CONTRACT WITH INSURANCE PRODUCERS.

- (1) Each insurer that employs, utilizes or contracts with an insurance producer to sell a life insurance policy shall require with or as part of each completed application for life insurance, a statement signed by the insurance producer as to whether s/he knows replacement will or may be involved in the transaction.
- (2) Where a replacement transaction is involved, an insurer shall require, in addition to the application for life insurance, the insurance producer to provide to it:
 - (a) a list of all of the applicant’s existing life insurance to be replaced, including name of insurer, insured and contract number or, if a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed;
 - (b) a copy of the Replacement Notice provided the applicant pursuant to rule 0780-1-24-.05(2)(a);
 - (c) proof of having sent, by certified or registered mail, a written communication to each existing insurer advising of the replacement or proposed replacement and the identification information obtained pursuant to rule 0780-1-24-.07(2)(a); and

- (d) a policy summary or ledger statement containing policy data on the proposed life insurance as required by Chapter 0780-1-40. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement required by Chapter 0780-1-40. This communication shall be made, in writing, within five (5) working days of the date the application is received in the replacing insurer's home or regional office or, alternatively, the date the proposed policy or contract is issued, whichever is sooner.
- (3) Each existing insurer or such insurer's insurance producer that undertakes a conservation shall, in addition to the materials required in rule 0780-1-24-.07(2)(a) and rule 0780-1-24-.07(2)(b), within twenty (20) days of the date on which the written communication was received, furnish the policyholder with a policy summary for the existing life insurance or ledger statement containing policy data on the existing policy.
- (4) Such policy summary or ledger statement shall be completed in accordance with the provisions of Chapter 0780-1-40, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of the rule or statute. Cost indices and equivalent level annual dividend figures need not be included. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be within five (5) working days of the receipt of the request.
- (5) The replacing insurer shall maintain evidence of the Notice, pursuant to rule 0780-1-24-.05(2)(a), the policy summary and any ledger statements used, and a replacement register, cross indexed, by replacing insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least five (5) years or until the conclusion of the next succeeding regular examination by the Department or other appropriate state regulatory agency of its state of domicile, whichever is earlier.
- (6) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty (20) days commencing from the date of delivery of the policy.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-24-.08 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES.

- (1) If, in the solicitation of a direct response sale, the insurer did not propose the replacement and a replacement is involved, the insurer shall send to the applicant, in addition to the policy, a Replacement Notice as described in Exhibit A or other substantially similar form which has been previously approved by the Commissioner.
- (2) If, in the solicitation of a direct response sale, the insurer proposed the replacement, the insurer shall:
- (a) Provide to applicants or prospective applicants with or as a part of the application the Notice, pursuant to rule 0780-1-24-.05(2)(a), as described in Exhibit A or other substantially similar form which has been previously approved by the Commissioner.
- (b) Request from the applicant with or as part of the application, a list of all existing life insurance to be replaced which shall be properly identified by name of insurer and insured.
- (c) Comply with the requirements of rule 0780-1-24-.07, if the applicant furnishes the names of the existing insurers.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-24-.09 PENALTIES.

- (1) A violation of this Chapter shall be deemed by the Commissioner to include the following:
 - (a) any and all instances in which an insurance producer or insurer, or person acting on behalf of an insurance producer or insurer, during the presentation or comparison of premiums and benefits or dividends and values of an insurance contract or contracts, makes an untrue, incomplete or inaccurate statement of fact or omits to state a material fact that, in light of the circumstances, would make the statement not misleading;
 - (b) any and all instances in which an insurance producer or insurer or person acting on behalf of an insurance producer or insurer, engages in a replacement transaction or transactions involving the same policyholder or policyholders and the insurance producer(s), insurer(s), person(s) or entities acting on behalf of the insurance producer(s) and/or insurer(s) indicate falsely on such applications that a replacement transaction is not involved or omit to state that a replacement transaction is involved when such is the case;
 - (c) any and all instances in which an insurance producer or insurer, or person acting on behalf of an insurance producer or insurer fails to comply with or, by reason of omission, fails to implement any provision of this rule.
- (2) A violation of this Chapter shall be deemed by the Commissioner to constitute grounds for the denial, refusal to renew, suspension or revocation of an insurance producer's license or of an insurer's certificate of authority.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798.

0780-1-24-.10 SEVERABILITY. If any section or portion of a section of this Chapter, or the applicability thereof to any person or circumstance, is held invalid or unlawful by a court of competent jurisdiction, the remainder of this Chapter or the applicability of such provision to other persons shall not be affected thereby.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798.

EXHIBIT A.

(NAME, ADDRESS AND TELEPHONE NUMBER OF THE INSURER)

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY

Are you thinking about buying a new life insurance policy and discontinuing or changing an existing one? *If you are, your decision could be a mistake.* You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or insurance producer that sold you your existing policy to give you information about it. You are urged not to take action to terminate, assign or alter your existing life insurance coverage until you have been issued the new policy, examined it and have found it acceptable.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

IF YOU SHOULD FAIL TO QUALIFY FOR THE LIFE INSURANCE FOR WHICH YOU HAVE APPLIED, YOU MAY FIND YOURSELF UNABLE TO PURCHASE OTHER LIFE INSURANCE OR ABLE TO PURCHASE IT ONLY AT SUBSTANTIALLY HIGHER RATES.

WE ARE REQUIRED BY LAW TO NOTIFY YOUR EXISTING INSURANCE COMPANY THAT YOU MAY BE REPLACING THEIR POLICY.

Applicant's Signature Date

Insurance Producer's Signature Date

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-50)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of amendments of rules in Chapter 0780-1-33, pursuant to T.C.A. §56-1-701. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-204, and will take place in Conference Room A, Fifth Floor, of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 19th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow 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 Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact Kevin C. Bartels, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-33

**RULES AND REGULATIONS COVERING
LIFE INSURANCE ADVERTISING**

AMENDMENTS

Chapter 0780-1-33 Rules and Regulations Covering Life Insurance Advertising is amended by deleting the title and all the language contained therein and by substituting instead the following language so that, as amended, the new title and rules shall read as set forth below.

RULES COVERING THE ADVERTISEMENT OF LIFE INSURANCE PRODUCTS.

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0780-1-33-.06 Unfair Methods of Competition.	

0780-1-33-.01 PURPOSE. The purpose of this Chapter is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies, including annuity contracts.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-33-.02 DEFINITIONS.

- (1) For the purpose of these rules, the following definitions shall apply:
 - (a) “Advertisement” means any written, verbal or electronic communication disseminated to any person through any medium that is intended to generate public interest in life insurance or annuities or in an insurer, or that is intended to induce any person to inquire about, purchase, increase, modify, reinstate, or retain a policy including:
 - 1. Descriptive and/or illustrative material of an insurer used in any medium;
 - 2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, electronic communications, and form letters;
 - 3. Material used for the recruitment, training, and education of an insurer’s sales personnel, insurance producers, solicitors, and brokers which is designated to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy;

4. Prepared sales talks, presentations, and material for use by sales personnel, insurance producers, solicitors, and brokers; and
 5. Internet web sites, email and all other information that is disseminated by an insurer through electronic means
- (b) "Advertisement" shall not include:
1. Written communications or materials used within an insurer's own organization and not intended for dissemination to the public;
 2. Written or oral communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy;
 3. Any general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.
- (c) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- (d) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance and/or his/her designee.
- (e) "Insurer" shall have the same meaning as defined in T.C.A. , Title 56, Chapter 6, Part 1.
- (f) "Insurance producer" shall have the same meaning as defined in T.C.A. , Title 56, Chapter 6, Part 1.
- (g) "Medium" means any medium upon which information can be stored, recorded, or retrieved, and includes, without limitation, any book, pamphlet, periodical, letter, note, memorandum, report, photograph, videotape, audiotape, computer disk, or any other written, typed, reported, transcribed, punched, taped, filmed, electronically or magnetically stored information, or graphic matter, however produced or reproduced.
- (h) "Person" means an individual or business entity.
- (i) "Policy" means a policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.
- (j) "Policyholder" means a person who owns a policy.
- (k) "Prominently display" means that such items, text or graphical material required to be prominently disclosed in advertisements subject to this chapter shall be placed at the beginning of each page, section or segment within such advertisements and shall be in a font size of no less than 12 points and shall, where practicable, be underlined, italicized, or placed in boldface type.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, § 3.

0780-1-33-.03 APPLICABILITY.

- (1) These rules shall apply to any life insurance or annuity advertisement intended for dissemination in this state.
- (2) Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements shall be the responsibility of the insurer.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-33-.04 FORM AND CONTENT OF ADVERTISEMENTS.

- (1) Advertisements disseminated by an insurer and/or insurance producer shall be truthful and not misleading in fact or by implication or omission. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. The advertisement(s) shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education and/or intelligence within the segment of the public to whom it is directed.
- (2) No advertisement disseminated by an insurer and/or insurance producer shall use the terms “investment”, “investment plan”, “founder’s plan”, “charter plan”, “expansion plan”, “profit”, “11 profits”, “profit sharing”, “interest plan”, “savings”, “savings plan”, or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that s/he will receive, or that it is possible that s/he will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, § 13.

0780-1-33-.05 DISCLOSURE REQUIREMENTS.

- (1) The information required to be disclosed by this Chapter shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading to any person.
- (2) No advertisement shall omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective policyholder for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.
- (3) In the event an advertisement uses “Non-Medical”, “No Medical Examination Required”, or similar terms where issue is not guaranteed, such terms shall also indicate that issuance of the policy may depend upon the prospective policyholder’s answers to the health questions. The fact that the issue of the insurance contract may depend upon the prospective policyholder’s answers to the health questions shall be prominently displayed.
- (4) An advertisement shall not use as the name or title of a life insurance policy or an annuity any phrase which does not include the words “life insurance” or “annuity” unless accompanied by other language clearly indicating it is life insurance or an annuity.

- (5) An advertisement shall prominently display and describe the type of policy advertised.
- (6) An advertisement of an insurance policy marketed by direct response techniques shall not state or imply that because there is no insurance producer or commission paid thereto that there will be a cost saving to prospective policyholders unless such statement is objectively and factually accurate. No such cost savings may be stated or implied without such justification.
- (7) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently displayed.
- (8) An advertisement for a policy with non-level premiums shall prominently display the premium changes.
- (9) Dividends.
 - (a) An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or a tendency to mislead.
 - (b) An advertisement shall not falsely or inaccurately state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.
 - (c) An advertisement shall not state or imply that illustrated dividends under a participating policy and/or pure endowments will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains:
 1. the benefits or coverage that would be provided at such future time; and
 2. the terms and conditions upon which such benefits would be assured.
- (10) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.
- (11) Testimonials or Endorsements by Third Parties.
 - (a) Testimonials of third parties used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial, the insurer makes as its own all of the statements contained therein, and such statements are subject to all the provisions of these rules.
 - (b) If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be prominently displayed in the advertisement.
 - (c) An advertisement shall not falsely or inaccurately state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization.

- (d) An insurer shall prominently display any proprietary relationship between itself and an organization described, mentioned, or referred to in any advertisement for life insurance. If the organization so described, mentioned or referred to is managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact shall also be prominently displayed in the advertisement.
- (12) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects all relevant facts concerning how such statistical information was compiled. The source of any such statistics used in an advertisement shall be identified therein.
- (13) Introductory, Initial or Special Offers and Enrollment Periods.
- (a) An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless the advertisement is accurate and complete with respect to any terms or conditions of such offers. An advertisement shall not describe an enrollment period as “special” or “limited” or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its method of marketing its policies.
 - (b) An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.
 - (c) An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.
 - (d) An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days from the date that such enrollment period is advertised for the first time. This rule applies to all advertisements by an insurer.
 - (e) This rule does not apply to the use of termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his request.
 - (f) This rule does not apply to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket or franchise insurance.
 - (g) In cases where an insurance product is marketed on a direct mail basis to prospective policyholders by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each such sponsoring organization.

- (14) An advertisement of a particular policy shall not falsely state or imply that prospective policyholders shall become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges.
- (15) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.

Authority: T.C.A. §§56-3-508, 56-2-301 and Tenn. Pub. Acts 2002, ch. 798, § 3.

0780-1-33-.06 UNFAIR METHODS OF COMPETITION.

- (1) The following acts and practices are defined herein as unfair trade practice or fraud, as provided in T.C.A. , Title 56, Chapter 6, Part 1 and are hereby prohibited in connection with the sale, solicitation, or negotiation of life insurance by an insurer and/or insurance producer:
 - (a) Making any statement, whether in oral, written or electronic form, relating to the growth of the life insurance industry or to the tax status of insurers in a context which would reasonably be understood to interest a prospect in the purchase of shares of stock in an insurer rather than in the purchase of a life insurance policy.
 - (b) Making any statement, whether in oral, written or electronic form, which reasonably gives rise to the inference that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurer by virtue of purchasing the policy.
 - (c) Providing a policyholder with any premium receipt book, policy jacket, return envelope, or other printed or electronically disseminated material containing references to the company's "Investment Department", "Insured Investment Department" or similar terminology, in such a manner as to imply that the policy was sold or issued or is serviced by the investment department of the insurer.
 - (d) Stating, whether in oral, written or electronic form, that each stockholder of an insurer is given the right to purchase or allocate a specific number of policies.
 - (e) Stating, whether in oral, written or electronic form, that policyholders who act as "centers of influence" for an insurer in that capacity will share in the insurer's surplus earnings in some manner not available to other policyholders of the same class.
 - (f) Stating or implying, whether in oral, written or electronic form, that the principal amounts payable under coupons represent interest, earnings, return on investment, or anything other than policy benefits, the cost of which is included in the total premium.
 - (g) Describing premium payments in language, whether in oral, written or electronic form, which states the premium payment is a "deposit", unless:
 - 1. the payment establishes a debtor-creditor relationship between the insurer and the policyholder; or
 - 2. the term is used in conjunction with the word "premium" in such manner as to clearly indicate the true character of the payment.

- (h) Including, in sales kits and sales presentations, proposed answers to a prospect's questions as to whether life insurance is being sold, which avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation, whether such answers are in oral, written or electronic form.
 - (i) Stating, whether in oral, written or electronic form, that an insured is guaranteed certain benefits if the policy is allowed to lapse, without making an objectively complete and factually accurate explanation of the non-forfeiture benefits.
 - (j) Using dollar amounts in advertisements that are not in relation to guaranteed values and properly projected dividend figures.
 - (k) Stating, whether in oral, written or electronic form, that a policy provides certain features which are not found in any other insurance policies, unless such policy features are clearly and prominently indicated in the contract for such policy.
 - (l) Making any statement, whether in oral, written or electronic form, regarding an insurance policy that cannot be verified by reference to the policy contract itself, or a specimen copy of the policy being described, or to the insurer's officially published rate book and dividend illustrations.
 - (m) Stating, whether in oral, written or electronic form, that life insurance is "loss proof" or "depression proof"; provided that paragraph (13) of Rule 0780-1-33-.06 shall not be construed to prohibit statements that life insurance benefits (other than dividends) are guaranteed by the insurer regardless of economic conditions.
 - (n) Making any statement, whether in oral, written or electronic form, that an insurer receives a profit as a result of policy lapses or surrenders.
 - (o) Making comparisons, whether in oral, written or electronic form, to the past experience of other insurers as a means of projecting possible experience of the insurer to whom an application is being submitted on behalf of a policyholder.
- (2) The following acts and practices, if committed by an insurer, may be considered by the Commissioner, pursuant to T.C.A. §§56-8-103 and 56-8-108, when determining if such insurer has engaged in a trade practice which is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance and are herein specifically described, without limitation, as instances of False Information and Advertising, as defined by T.C.A. §56-8-104(1).
- (a) Making any statement, whether in oral, written or electronic form, relating to the growth of the life insurance industry or to the tax status of insurers in a context which would reasonably be understood to interest a prospect in the purchase of shares of stock in an insurer rather than in the purchase of a life insurance policy.
 - (b) Making any statement, whether in oral, written or electronic form, which reasonably gives rise to the inference that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurer by virtue of purchasing the policy.
 - (c) Providing a policyholder with any premium receipt book, policy jacket, return envelope, or other printed or electronically disseminated material containing references to the company's "Investment Department", "Insured Investment Department," or similar terminology, in such a manner as to imply that the policy was sold or issued or is serviced by the investment department of the insurer.

- (d) Stating, whether in oral, written or electronic form, that each stockholder of an insurer is given the right to purchase or allocate a specific number of policies.
- (e) Stating, whether in oral, written or electronic form, that policyholders who act as “centers of influence” for an insurer in that capacity will share in the insurer’s surplus earnings in some manner not available to other policyholders of the same class.
- (f) Stating or implying, whether in oral, written or electronic form, that the principal amounts payable under coupons represent interest, earnings, return on investment, or anything other than policy benefits, the cost of which is included in the total premium.
- (g) Describing premium payments in language, whether in oral, written or electronic form, which states the premium payment is a “deposit”, unless:
 - 1. the payment establishes a debtor-creditor relationship between the insurer and the policyholder; or
 - 2. the term is used in conjunction with the word “premium” in such manner as to clearly indicate the true character of the payment.
- (h) Including, in sales kits and sales presentations, proposed answers to a prospect’s questions as to whether life insurance is being sold, which avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation, whether such answers are in oral, written or electronic form.
- (i) Stating, whether in oral, written or electronic form, that an insured is guaranteed certain benefits if the policy is allowed to lapse, without making an objectively complete and factually accurate explanation of the non-forfeiture benefits.
- (j) Using dollar amounts in advertisements that are not in relation to guaranteed values and properly projected dividend figures.
- (k) Stating, whether in oral, written or electronic form, that a policy provides certain features which are not found in any other insurance policies, unless such policy features are clearly and prominently indicated in the contract for such policy.
- (l) Making any statement, whether in oral, written or electronic form, with regard to an insurance policy that cannot be verified by reference to the policy contract itself, or a specimen copy of the policy being described, or to the insurer’s officially published rate book and dividend illustrations.
- (m) Stating, whether in oral, written or electronic form, that life insurance is “loss proof” or “depression proof”; provided that paragraph (13) of Rule 0780-1-33-.06 shall not be construed to prohibit statements that life insurance benefits (other than dividends) are guaranteed by the insurer regardless of economic conditions.
- (n) Making any statement, whether in oral, written or electronic form, that an insurer receives a profit as a result of policy lapses or surrenders.
- (o) Making comparisons, whether in oral, written or electronic form, to the past experience of other insurers as a means of projecting possible experience of the insurer to whom an application is being submitted on behalf of a policyholder.

Authority: T.C.A. §§56-2-301, 56-3-508, 56-8-113 and Tenn. Pub. Acts 2002, ch. 798, § 13.

0780-1-33-.07 IDENTITY OF INSURER.

- (1) The name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that any company other than the insurer would have any responsibility for the financial obligation under a policy.
- (2) No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by governmental programs of agencies or otherwise appear to be of such a nature that it tends to mislead prospective insurers into believing that the solicitation is in some manner connected with any such governmental program or agency.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-33-.08 STATEMENTS ABOUT AN INSURER. An advertisement shall not contain statements, pictures, or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age, or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, § 3.

0780-1-33-.09 RECORDS REQUIRED.

- (1) Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published, or prepared advertisement of its individual policies and specimen copies of typical printed, published, or prepared advertisements of its blanket, franchise, and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by this department. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.
- (2) Each insurer subject to the provisions of these rules shall file with this department with its Annual Statement a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information, and belief the advertisements which were disseminated by the insurer in this state during the preceding statement year, or during the portion of such year when these rules were in effect, complied or were made to comply in all respects with the provisions of these rules and the Insurance Laws of this state as implemented and interpreted by this Chapter.

Authority: T.C.A. §§56-2-301 and 56-3-508.

0780-1-33-.10 PRIOR APPROVAL OF ADVERTISING REQUIRED.

- (1) Upon the Commissioner's request and upon a written finding by the Commissioner of a violation of this Chapter by an insurer, an insurer shall, prior to use, file for approval every advertisement or solicitation to be disseminated in written or electronic form which it intends to use in connection with the solicitation of a contract of insurance in the State of Tennessee.
- (2) For the purpose of subparagraph (a) of paragraph (1) of this Rule, "prior to its use" shall mean the filing of such advertising material at least thirty (30) days prior to its use by an insurer or insurance producer.
- (3) Approval of an insurer's advertisement or solicitation to purchase insurance shall be granted by the Department if the Commissioner or his/her designee finds that:
 - (a) The advertisement or solicitation filed by the insurer with the Commissioner pursuant to this rule substantially conforms to the requirements of this Chapter and any other applicable provisions of the Tennessee Insurance Law, as amended, at T.C.A. §56-1-101, *et seq.*
 - (b) Such approval is in the public interest and shall not constitute a detriment to Tennessee policyholders.

Authority: T.C.A. §§56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, § 13.

0780-1-33-.11 PENALTIES.

- (1) Any violation by an insurer, insurance producer, or person of any provision of this Chapter shall constitute an unfair method of competition and unfair or deceptive act or practice in the business of insurance in this State and, if committed by an insurer, may be considered by the Commissioner, pursuant to T.C.A. §§56-8-103 and 56-8-108, when determining if such insurer has engaged in a trade practice which is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.
- (2) Any violation of this Chapter by any insurer, insurance producer, or person shall subject such insurer, insurance producer and/or person to any and all the penalties and sanctions provided by the Tennessee Insurance Law, as amended, at T.C.A. §§56-1-101, *et seq.*, which shall include the assessment of civil penalties and/or the denial, suspension or revocation of an insurance producer's license or an insurer's certificate of authority.

Authority: T.C.A. §§56-2-301, 56-3-508, 56-8-113 and Tenn. Pub. Acts 2002, ch. 798, § 13.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-51)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-37. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow 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 Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-37
RELATING TO THE FILING OF ANNUAL STATEMENTS WITH THE
DEPARTMENT OF INSURANCE**

AMENDMENTS

Chapter 0780-1-37 Relating to the Filing of Annual Statements with the Department of Insurance is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-37
ANNUAL STATEMENT FILING REQUIREMENTS**

TABLE OF CONTENTS

0780-1-37-.01 Definitions	0780-1-37-.05	Violations and Penalties
0780-1-37-.02 Form of Annual Statements to be Filed with the Department of Commerce and Insurance	0780-1-37-.06	Applicability of Financial Statements or Information Prepared on a Basis Other Than Statutory Accounting Practices
0780-1-37-.03 Instructions for Completion of Annual Statement Forms		
0780-1-37-.04 Quarterly Financial Statements to be Filed with Department of Commerce and Insurance		

0780-1-37-.01 DEFINITIONS

- (1) As used in this Chapter, unless noted otherwise, the following definitions shall apply:
 - (a) “Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance.
 - (b) “Department” means the Tennessee Department of Commerce and Insurance.

Authority: T.C.A. §§56-1-501 and 56-44-102(a)(1).

0780-1-37-.02 FORM OF ANNUAL STATEMENTS TO BE FILED WITH THE DEPARTMENT OF COMMERCE AND INSURANCE.

- (1) Pursuant to the annual financial reporting requirements of T.C.A. § 56-1-501, all companies enumerated in T.C.A. § 56-1-501(b) must use the following annual statement forms adopted by the National Association of Insurance Commissioners, as amended from time to time, as is appropriate for each line or types of insurance business in which the company is engaged, unless such forms are in contradiction with a law or statute:
 - (a) Life and Accident and Health Annual Statement Blank
 - (b) Property and Casualty Annual Statement Blank
 - (c) Title Annual Statement Blank
 - (d) Fraternal Annual Statement Blank
 - (e) Health Annual Statement Blank
- (2) Companies are required to use any annual statement forms adopted by the National Association of Insurance Commissioners for any other lines or types of insurance business that may be applicable to companies licensed and operating in this State.

Authority: T.C.A. §56-1-501.

0780-1-37-.03 INSTRUCTIONS FOR COMPLETION OF ANNUAL STATEMENT FORMS.

- (1) For completion of the annual statement forms required under Rule 0780-1-37-.02, and except when such instructions conflict with a statute, the applicable instructions adopted by the National Association of Insurance Commissioners, as amended from time to time, and as follows, as well as all other applicable rules adopted by the Department, must be followed in completing and filing the annual statement forms:
 - (a) Instructions for Completing Life and Accident and Health Annual Statement Blank
 - (b) Instructions for Completing Property and Casualty Annual Statement Blank
 - (c) Instructions for Completing Title Annual Statement Blank
 - (d) Instructions for Completing Fraternal Annual Statement Blank
 - (e) Instructions for Completing Health Annual Statement Blank
- (2) Companies are required to use any instructions adopted by the National Association of Insurance Commissioners which are applicable to any annual statement form referenced in Rule 0780-1-37-.02.

Authority: T.C.A. §56-1-501.

0780-1-37-.04 QUARTERLY FINANCIAL STATEMENTS TO BE FILED WITH DEPARTMENT OF COMMERCE AND INSURANCE.

- (1) In addition to annual statements required by T.C.A. § 56-1-501, all companies required to file such annual statements are also required to file financial statements on a quarterly basis. Such quarterly statements must be filed on May 15, August 15, and November 15 of each year. Foreign insurance companies shall unless requested by the Commissioner file their quarterly statements with the National Association of Insurance Commissioners in lieu of filing such statements with the Commissioner.
- (2) Pursuant to the annual financial reporting requirements of T.C.A. § 56-1-501, all companies enumerated in T.C.A. § 56-1-501(b) must use the following Quarterly Financial Statement forms adopted by the National Association of Insurance Commissioners, as amended from time to time:
 - (a) Life and Accident and Health Quarterly Statement Blank
 - (b) Property and Casualty Quarterly Statement Blank
 - (c) Title Quarterly Statement Blank
 - (d) Fraternal Quarterly Statement Blank
 - (e) Health Quarterly Statement Blank
- (3) Companies are required to use any quarterly statement form adopted by the National Association of Insurance Commissioners for any other lines or types of insurance business that may be applicable to companies licensed and operating in this State.

Authority: T.C.A. §§56-1-501 and 56-44-102(a)(1).

0780-1-37-.05 VIOLATIONS AND PENALTIES.

Any company that fails to make and file its annual statement in the form and time provided by this rule shall be subject to the penalties provided for by T.C.A. § 56-1-502, as well as such other sanctions provided for by law.

Authority: T.C.A. §§56-1-501, 56-1-502 and 56-44-102(a)(1).

0780-1-37-.06 APPLICABILITY OF FINANCIAL STATEMENTS OR INFORMATION PREPARED ON A BASIS OTHER THAN STATUTORY ACCOUNTING PRACTICES.

Financial statements or information not prepared in a manner consistent with all applicable laws and the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the applicable reporting period shall not be deemed to meet the filing requirements of T.C.A. § 56-1-501 or Rule 0780-1-37-.04.

Authority: T.C.A. §§56-1-501 and 56-44-102(a)(1).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-52)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-41. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-41
RELATING TO TENNESSEE CAPTIVE INSURANCE COMPANIES**

AMENDMENTS

Chapter 0780-1-41 Relating to Tennessee Captive Insurance Companies is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-41
TENNESSEE CAPTIVE INSURANCE COMPANIES**

TABLE OF CONTENTS

0780-1-41-.01 Purpose	Appendix A Captive Insurance Company Irrevocable Letter of Credit
0780-1-41-.02 Required Form Letter of Credit	

0780-1-41-.01 PURPOSE.

The purpose of this rule is to adopt a form letter of credit which may be used by captive insurance companies that wish to file such letters of credit in lieu of depositing cash or securities representing the capital required by T.C.A. § 56-13-116.

Authority: T.C.A. §§56-13-116 and 56-13-129.

0780-1-41-.02 REQUIRED FORM LETTER OF CREDIT.

A captive insurance company that wishes to file a letter of credit in lieu of depositing cash or securities with the commissioner in an amount representing the capital required by T.C.A. § 56-13-116 must use the form Captive Insurance Company Irrevocable Letter of Credit, hereby made a part of this Chapter as an appendix hereto.

Authority: T.C.A. §§56-13-116 and 56-13-129.

APPENDIX A
CAPTIVE INSURANCE COMPANY
IRREVOCABLE LETTER OF CREDIT

<Name of Bank>

<City and State>

Letter of Credit No. _____

Commissioner of Commerce and Insurance
 State of Tennessee

Date _____

Commissioner:

1. We hereby establish our IRREVOCABLE LETTER OF CREDIT in your favor for the account of <Name of Tennessee Captive Insurance Company> up to the aggregate amount of \$1,000,000 available by your draft(s) drawn on us, at sight, bearing the above number of this IRREVOCABLE LETTER OF CREDIT. This IRREVOCABLE LETTER OF CREDIT shall expire at our Letter of Credit Department, <City & State>, at our close of business on <Date>, unless as hereinafter extended.
2. This IRREVOCABLE LETTER OF CREDIT is issued pursuant to the provisions of T.C.A. §§56-13-101, *et seq.*, as amended, The Tennessee Captive Insurance Company Act of 1978, and on behalf of the above mentioned Tennessee Captive Insurance Company which is applying for a Certificate of Authority to engage in the insurance business in the State of Tennessee as a captive insurance company.
3. It is a condition of this IRREVOCABLE LETTER OF CREDIT that it shall be automatically extended for additional one (1) year periods unless at least ninety (90) calendar days prior to the then relevant expiration date we have advised you in writing that we elect not to extend. In that event, you may draw hereunder on or prior to the then relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this IRREVOCABLE LETTER OF CREDIT.
4. It is a further condition of this IRREVOCABLE LETTER OF CREDIT that each automatic extension shall be measured from the then relevant expiration date or relevant expiration date, even though such date be not a business day in <City & State> for this Bank. It is also a condition of this IRREVOCABLE LETTER OF CREDIT that, for the purpose of drawing hereunder, if the then relevant expiration date is a non-business day for our Bank, drawing may be made not later than our next immediately following business day.
5. This IRREVOCABLE LETTER OF CREDIT sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument or agreement referred to herein or in which this IRREVOCABLE LETTER OF CREDIT is referred to or to which this IRREVOCABLE LETTER OF CREDIT relates and any such reference shall not be deemed to incorporate herein by reference to any note, document, instrument or agreement.
6. Each sight draft so drawn and presented shall be promptly honored by us if presented on or prior to the above stated expiration date or any extension thereof as above provided.

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-46. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-46
RELATING TO SECURITIES HELD UNDER CUSTODIAL AGREEMENTS AND
PARTICIPATION BY INSURANCE COMPANIES IN
DEPOSITORY TRUST COMPANIES AND FEDERAL
RESERVE BOOK ENTRY SYSTEMS**

AMENDMENTS

Chapter 0780-1-46 Relating to Securities Held Under Custodial Agreements and Participation by Insurance Companies in Depository Trust Companies and Federal Reserve Book Entry Systems is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-46
PERMISSIBLE METHODS OF HOLDING SECURITIES AND
SECURITIES TO BE DEPOSITED WITH THE DEPARTMENT OF COMMERCE AND INSURANCE**

TABLE OF CONTENTS

0780-1-46-.01 Purpose	Appendix A Custodial Agreement
0780-1-46-.02 Definitions	Appendix B Custodian Affidavit A
0780-1-46-.03 Permissible Methods of Holding Securities	Appendix C Custodian Affidavit B
0780-1-46-.04 Securities Held on Deposit with the Commissioner	Appendix D Custodian Affidavit C

0780-1-46-.01 PURPOSE.

- (1) The purpose of this Chapter is to expedite the verification of insurance company assets during examinations conducted by the Department; to reduce costs and simplify delivery and receipt procedures involved in security transactions by insurance companies; to reduce the exposure of securities to loss, theft, misplacement, damage, and other destruction; and to better provide for the storage, inspection, transportation, counting, and insuring of securities.

- (2) Further purposes are to establish procedures for the verification of securities which insurance companies deposit in banks under custodial agreements; to permit insurance companies to hold securities in other than definitive certificates; to better safeguard the actual securities; to facilitate checking assets of an insurance company; and to recognize that definitive securities no longer represent the only tangible evidence of security obligations held by an insurance company.

Authority: T.C.A. § 56-3-112.

0780-1-46-.02 DEFINITIONS.

- (1) The following words and terms, when used in this Chapter, shall have, unless the context clearly indicates otherwise, the following meanings:
 - (a) “Definitive Security” includes but is not limited to bonds, notes, debentures, stock certificates and other like securities.
 - (b) “Department” means the Tennessee Department of Commerce and Insurance.
 - (c) “Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance.
 - (d) “Clearing Corporation” means a depository corporation which maintains a book entry accounting system which meets the requirements of the definition of the terms in T.C.A. § 47-8-101(3), including the Depository Trust Company or any other like entity which meets similar standards of depository safeguards and regulatory control.

Authority: T.C.A. § 56-3-112.

0780-1-46-.03 PERMISSIBLE METHODS OF HOLDING SECURITIES.

- (1) An insurance company may hold its securities in the following authorized manners:
 - (a) An insurance company may hold its securities in definitive certificates.
 - (b) An insurance company may hold its securities pursuant to its participation in the book entry system of the Federal Reserve through a member bank of the Federal Reserve System which, as a custodian, can transact and maintain book entry securities for the insurance company.
 - (i) This subparagraph shall not be interpreted so as to preclude an insurance company from participation in the Federal Reserve book entry system under a custodial agreement with a state-chartered bank which has redeposited securities with a member bank for participation in the Federal Reserve book entry program.
 - (c) An insurance company may hold its securities pursuant to its participation in depository systems of clearing corporations through a custodian bank.
- (2) All insurance companies choosing to hold its securities in the manner described in subparagraphs (1)(b) or (1)(c) of this Rule shall execute a proper custodial agreement and appropriate custodian affidavits for its securities held under custodial agreements.

- (a) The custodial agreement required by this Rule shall contain the following:
 - (i) A provision stating that the standard of responsibility on the part of the custodian shall not be less than that of the responsibility of a bailee for hire or a fiduciary under statutory or case law of Tennessee;
 - (ii) A provision stating that the securities held by the custodian are subject to instructions of the insurance company;
 - (iii) A provision stating that the securities may be withdrawn immediately upon demand of the insurance company; and
 - (iv) A provision stating that the agreement is between the custodian and the insurance company, and not the parent or affiliate of the insurance company.
- (b) Such executed affidavits as well as the underlying agreement between the insurance company and the custodian shall be available to the Commissioner upon request pursuant to examinations conducted under T.C.A. §§ 56-1-408 through 56-1-413.
- (c) Examples of an acceptable custodial agreement as well as acceptable custodial affidavits are included in this Rule as appendices hereto.
- (3) Each insurance company which enters into a custodial agreement must determine that the custodian maintains sufficient records to verify information which the insurance company reports on the Schedule D of the insurance company's Annual Statement blank(s).
- (4) Failure to execute a proper custodial agreement or custodian affidavit may result in the Commissioner's non-admission of the insurance company's assets which are not held in a manner authorized by this Rule.

Authority: T.C.A. § 56-3-112.

0780-1-46-.04 SECURITIES HELD ON DEPOSIT WITH THE COMMISSIONER.

- (1) Securities to be placed on deposit with the Commissioner, pursuant to the provisions of T.C.A. §§ 56-2-104, 56-21-102, 56-35-116 and 56-13-117 must be maintained under a separate depository agreement between the depository institution (commercial bank or clearing corporation), the insurance company and the Commissioner.
 - (a) This depository agreement required by this Rule must contain the following:
 - (i) Provisions to require the depository institution to provide verification of securities on deposit to the Commissioner;
 - (ii) Provisions that allow the Commissioner to require such verification from the custodian at any time the Commissioner deems that verification is appropriate. Examples of appropriate verification documents are Appendices B, C and D.
 - (iii) Provisions that require an authorized signature of the insurance company and the Commissioner, and/or his deputy, to concurrently appear on any withdrawal notices to the depository institution.

Authority: T.C.A. §56-2-117.

APPENDIX A

CUSTODIAL AGREEMENT

(For use by an insurance company which deposits its securities with a custodial depository institution.)

1. The Principal is the owner of certain securities, held on book-entry with <BANK>, in the name of <BANK> and evidenced by trade orders from the <INSURANCE COMPANY> to <BANK>, delivered for the settlement of securities trades by brokers and evidenced by trade orders from <INSURANCE COMPANY> to <BANK> or received as income from assets held by <BANK> for <INSURANCE COMPANY>, some of which are subject to a separate Depository Agreement among <INSURANCE COMPANY> and the Commissioner of the Commerce and Insurance for the State of Tennessee, the terms and conditions of which take precedence over any conflicting terms and conditions in this agreement.

2. Custody of Assets

<BANK> shall hold and manage these assets for the benefit of, and at the direction of, <INSURANCE COMPANY>.

- a. <BANK>, a member of the Federal Reserve System, may utilize the Federal Reserve book-entry program. <BANK> shall hold such securities on deposit in an account with the name <INSURANCE COMPANY>. <BANK>, on its accounting system, will designate any securities so deposited as belonging to <INSURANCE COMPANY>.
- b. <BANK> may hold any securities not eligible for book-entry at <BANK> in the following manner:
 - (1) items eligible for book-entry at the Depository Trust Company ("DTC") – an account directly with DTC or in an account with another bank or trust company who has an account at DTC, and
 - (2) items not eligible for book-entry at DTC – in an account with another bank, trust company, or registered open-end management investment company or in the <BANK>'s own vault in either registered or bearer form.

Securities so deposited will at all times be kept separate and apart from other such deposits with <BANK> so that they may be identified as belonging to <INSURANCE COMPANY>. The records of any other bank, trust company or registered open-end management investment company, with which <BANK> may hold the securities (either at DTC or otherwise), shall designate the account name for which it is being held.

- c. Upon request from the Department of Commerce and Insurance, <BANK> shall provide verification of securities on deposit. Examples of appropriate verification documents are Custodian Affidavits Forms A, B, and C.
- d. The collection of principal cash shall be made by <BANK> in accordance with its usual and customary business practice and in accordance with the usual and customary business practices for the banking and securities industries.

3. Income Collection and Investment

Income from the securities in this account shall be deposited into the demand deposit account of <INSURANCE COMPANY> as directed from time to time by an authorized agent of <INSURANCE COMPANY>. The collection of income shall be made by <BANK> in accordance with its usual and customary business practice and in accordance with the usual and customary business practices for the banking and securities industries. <BANK> will collect all income from investments held by it for <INSURANCE COMPANY> except any securities that are registered in the name of <INSURANCE COMPANY>.

4. Record-keeping and Reporting

<BANK> will keep records of all income and principal entries and will review statements of assets to <INSURANCE COMPANY> at least quarterly. All records of <BANK> concerning this account with <INSURANCE COMPANY> shall be available for inspection, during regular banking hours, by any duly authorized representative of <INSURANCE COMPANY>. Any errors or corrections on statements or in the account will be reported to <BANK> by <INSURANCE COMPANY> within a reasonable time of the receipt of the statement, but not to exceed ninety (90) days. Otherwise, all actions of <BANK> as reported shall be deemed to have been approved by <INSURANCE COMPANY>. <BANK>, when it becomes aware of the following events, shall notify <INSURANCE COMPANY> of matured but uncollected principal and interest, of securities called for redemption, of the expiration of the conversion privileged, of subscription or conversion rights and of similar proceedings relating to the assets in the account.

5. Indemnification

- a. <BANK> is obligated to indemnify <INSURANCE COMPANY> for any loss of securities of <INSURANCE COMPANY> in <BANK>'s care, whether in <BANK>'s vault or in an account of <BANK> identified as belonging to <INSURANCE COMPANY> with another bank, trust company or registered open-end management investment company, except that, unless domiciliary state law, regulation or administrative action otherwise require a stricter standard, <BANK> shall not be so obligated to the extent that such loss was caused by other than burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction, or the negligence or dishonesty of <BANK>, of its agents or of any other bank, trust company or registered open-end management investment company with which <BANK> is holding securities for <INSURANCE COMPANY>.
- b. If the domiciliary state law, regulation or administrative action requires a stricter standard of liability for custodians of insurance company securities than that set forth in Section 5.a., then such stricter standard shall apply.
- c. In the event there is a loss of the securities for which <BANK> is obligated to indemnify <INSURANCE COMPANY>, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced.
- d. <BANK> shall not be liable for any failure to take action required to be taken hereunder in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution insurrection, riot, civil commotion, act of God, laws, regulations, orders or other acts of any governmental or judicial authority, or any other cause beyond <BANK>'s reasonable control.
- e. In addition to the preceding requirements of this Section 5, <BANK>'s standard of responsibility hereunder shall be that of a bailee for hire under statutory and case law of the State of Tennessee. Without limiting the generality of the foregoing, it is agreed and understood that <BANK> is not acting as a trustee and further that <BANK> is in no way responsible or liable for any decline in value of any securities.

6. Investment Responsibility

<BANK> will have no investment responsibility or authority and will make investments only on the direction of <INSURANCE COMPANY>.

7. Fees

<BANK> may be paid an annual fee by <INSURANCE COMPANY> for the services rendered under this agreement.

8. Termination

This agreement may be terminated by either party upon thirty (30) days' written notice given to the other party. Since the transfer of assets may take more than thirty (30) days from the date of the termination notice, <BANK> shall have a reasonable time after receipt of the written notice to deliver the assets to <INSURANCE COMPANY> or the new custodian and <INSURANCE COMPANY> shall have a reasonable time after receipt of the written notice to prepare to receive the assets or appoint a new custodian to receive the assets of <INSURANCE COMPANY>'s behalf. If a new custodian is appointed to hold the assets for <INSURANCE COMPANY>, <INSURANCE COMPANY> shall give <BANK> the delivery instructions to the new custodian.

9. Governing Law

This agreement shall be construed and interpreted according to the laws of the State of Tennessee.

<BANK>

<INSURANCE COMPANY>

APPENDIX B

CUSTODIAN AFFIDAVIT A

(For use by a custodian bank for securities entrusted to its care which have not been redeposited elsewhere.)

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED BANK OFFICER>, being duly sworn deposes and says that he is the <POSITION> of <BANK>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bank");

That my duties involve supervision of activities of the Bank as custodian and records relating thereto;

That the Bank is custodian for certain securities of <INSURANCE COMPANY>, having a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bank and the Insurance Company,

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with the Depository Trust Company or like entity or a Federal Reserve bank under the Federal Reserve book entry procedure) which were in the custody of the Bank for the account of the Insurance Company as of the close of business on <DATE>; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the Insurance Company or its nominee or a nominee of the Bank, or were in the process of being registered in such form;

That the Bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the Bank as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, _____.

<AUTHORIZED BANK OFFICER>

APPENDIX C

CUSTODIAN AFFIDAVIT B

(For use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity.)

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED BANK OFFICER>, being duly sworn deposes and says that he is the <POSITION> of <BANK>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bank");

That my duties involve supervision of activities of the Bank as custodian and records relating thereto;

That the Bank is custodian for certain securities of <INSURANCE COMPANY> with a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bank and the Insurance Company;

That the Bank has caused certain of such securities to be deposited with the Depository Trust Company, and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the Bank was custodian as of the close of business on <DATE>, and which were so deposited on such date;

That the Bank as custodian has the same responsibility for the safekeeping of such securities whether in the possession of the Bank or deposited as that responsibility is specifically set forth in the agreement between the Bank as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, _____.

<AUTHORIZED BANK OFFICER>

APPENDIX D

CUSTODIAN AFFIDAVIT C

(For use where ownership is evidenced by book entry at a Federal Reserve Bank.)

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED BANK OFFICER>, being duly sworn deposes and says that he is the <POSITION> of <BANK>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bank");

That my duties involve the supervision of activities of the Bank as custodian and records relating thereto;

That the Bank is custodian for certain securities of <INSURANCE COMPANY> with a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bank and the Insurance Company;

That <BANK> has caused certain of such securities to be credited to its book entry account with a Federal Reserve Bank under the Federal Reserve book entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the Bank was custodian as of the close of business on _____ which were in a "general" book entry account maintained in the name of the Bank on the books and records of a Federal Reserve Bank at such date;

That the Bank has the same responsibility for the safekeeping of such securities whether in the possession of the Bank or in said "general" book entry account as that responsibility is specifically set forth in the agreement between the Bank as custodian and the Insurance Company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said Insurance Company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, _____.

<AUTHORIZED BANK OFFICER>

Authority: T.C.A. § 56-3-112.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-54)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-50. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-50
RELATING TO TIMELY FILING OF PREMIUM TAX RETURNS**

AMENDMENTS

Chapter 0780-1-50 Relating to the Timely Filing of Premium Tax Returns is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-50
PREMIUM TAX FILING REQUIREMENTS**

TABLE OF CONTENTS

0780-1-50-.01 Definitions	0780-1-50-.03 Due Date of Payments
0780-1-50-.02 Purpose	0780-1-50-.04 Correct Tax Return

0780-1-50-.01 DEFINITIONS.

- (1) “Commissioner”, as used herein, shall mean the Commissioner of Commerce and Insurance.
- (2) “Payment”, as used herein, shall mean a check payable to the Commissioner in the full amount due as calculated on the tax return.
- (3) “Tax return”, as used herein, shall mean the tax return form identified in T.C.A. § 56-4-205(a)(2), accompanied by the appropriate tax payment.

Authority: T.C.A. §§56-1-701, 56-4-205 through 56-4-209 and 56-4-216.

0780-1-50-.02 PURPOSE.

The purpose of this rule is to identify acceptable methods for making tax return filings and payment, as required by Tenn. Code Ann. Title 56, Chapter 4.

Authority: T.C.A. §§56-1-701, 56-4-205 through 56-4-209 and 56-4-216.

0780-1-50-.03 DUE DATE OF PAYMENTS.

For the purposes of the requirements of Tenn. Code Ann. Title 56, Chapter 4, all taxes on gross premiums shall not be considered to have been filed “promptly” unless the tax return is actually received by the Department of Commerce and Insurance on or before the actual due dates of March 1, June 1, August 20, and December 1 of each year; except, that a tax return will be considered to have been filed “promptly” provided such tax return bears a postmark, or comparable marking, no later than March 1, June 1, August 20, and December 1 and is transmitted by the United States Postal Service, Federal Express, United Postal Services, or other carrier recognized by the Commissioner to be acceptable; provided that, however, a premium tax return received by the Commissioner bearing a metered mail stamp and no post office cancellation mark stamped by the United States post office shall be deemed filed and received on the date such premium tax return is received by the Commissioner.

Authority: T.C.A. §§56-1-701, 56-4-205 through 56-4-209 and 56-4-216.

0780-1-50-.04 CORRECT TAX RETURN.

For the purposes of the requirements of T.C.A. § 56-4-216, a tax return will not be considered to have been filed “correctly” if the Commissioner determines that there is a deficiency in the tax payment received from the company. All deficiencies shall be subject to the penalty and interest as provided in T.C.A. § 56-4-216, and will apply to any portion of the tax unpaid on the actual due dates of March 1, June 1, August 20, and December 1 of each year.

Authority: T.C.A. §§56-1-701, 56-4-205 through 56-4-209 and 56-4-216.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-55)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-64. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-64
ACTUARIAL OPINION AND MEMORANDUM REGULATION**

AMENDMENTS

Chapter 0780-1-64 Actuarial Opinions and Memorandum Regulation is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and substituting instead the abbreviation “Tenn. Code Ann.”.

Paragraph (1) of Rule 0780-1-64-.06 Required Opinions is amended by deleting the paragraph in its entirety and substituting the following language so that, as amended, the paragraph shall read:

- (1) In accordance with Tenn. Code Ann. §56-1-501(d), every company doing business in Tennessee shall annually submit the opinion of an appointed actuary as provided for by this Chapter. The type of opinion submitted shall be determined by the provisions set forth in this rule and shall be in accordance with the applicable provisions in this Chapter.
 - (a) The Commissioner may exempt domestic insurance companies from the requirement of submitting such opinions upon request by the company. The grounds for exemption shall be the same as those available to property and casualty companies as enumerated in the Instructions for Completing Property and Casualty Annual Statement Blank, as amended from time to time. Requests for exemption shall be submitted no later than December 1 of the calendar year for which the exemption is to be claimed.
 - (b) A foreign insurance company, unless otherwise directed by the Commissioner, is exempted from filing an actuarial opinion pursuant to this rule, if that company has received an exemption or like permission from the company’s domestic insurance regulator; provided that the company attach a copy of the exemption on the inside front cover of the company’s annual statement.

Authority: T.C.A. §56-1-501(d).

Rule 0780-1-64-.07 Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

Rule 0780-1-64-.07 Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis.

Notwithstanding any other requirements of this Chapter, the statement of actuarial opinion not including an asset adequacy analysis required by this chapter shall be completed in accordance with the NAIC Annual Statement Instructions for such actuarial opinions.

Authority: T.C.A. §§56-1-402(d)-(g), 56-1-501(d) and 56-2-301.

Rule 0780-1-64-.08 Statement of Actuarial Opinion Based on Asset Adequacy Analysis is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

Rule 0780-1-64-.08 Statement of Actuarial Opinion Based on Asset Adequacy Analysis.

Notwithstanding any other requirements of this Chapter, the statement of actuarial opinion based on asset adequacy analysis required by this chapter shall be completed in accordance with the NAIC Annual Statement Instructions for such actuarial opinions.

Authority: T.C.A. §§56-1-402(d)-(g), 56-1-501(d) and 56-2-301.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-56)

THE DEPARTMENT OF COMMERCE AND INSURANCE - 0780 INSURANCE DIVISION

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-65. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULE**CHAPTER 0780-1-65
ANNUAL AUDITED FINANCIAL REPORTS****AMENDMENTS**

Chapter 0780-1-65 Annual Audited Financial Reports is amended by deleting the abbreviation "T.C.A." and the term "Tennessee Code Annotated" wherever they may appear and substituting instead the abbreviation "Tenn. Code Ann.".

Rule 0780-1-65-.08 Consolidated or Combined Audits is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-1-65-.08 CONSOLIDATED OR COMBINED AUDITS.

- (1) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. A foreign insurance company which meets the above requirements need only file with the Commissioner the approval received from its domestic regulator allowing it to so file in its state of domiciliary. All consolidated or combined financial statements shall be accompanied by a columnar consolidating or combining worksheet that contains, at a minimum, the following:
 - (a) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.
 - (b) Amounts for each insurer subject to this paragraph shall be stated separately.
 - (c) Noninsurance operations may be shown on the worksheet on a combined or individual basis.
 - (d) Explanations of consolidating and eliminating entries shall be included.
 - (e) A reconciliation shall be included of any difference between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

Authority: T.C.A. §§56-1-501(h) and 56-2-301.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-57)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of amendments of rules in Chapter 0780-1-67. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

**CHAPTER 0780-1-67
INSURANCE HOLDING COMPANY SYSTEM REGULATION
WITH REPORTING FORMS AND INSTRUCTIONS**

AMENDMENTS

Chapter 0780-1-67 Insurance Holding Company System Regulation with Reporting Forms and Instructions is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-67
INSURANCE HOLDING COMPANY SYSTEM REGULATION
WITH REPORTING FORMS AND INSTRUCTIONS**

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0780-1-67-.01 Authority	0780-1-67-.15 Disclaimers and Termination of Registration
0780-1-67-.02 Purpose	0780-1-67-.16 Transactions Subject to Prior Notice – Notice Filing
0780-1-67-.03 Definitions	0780-1-67-.17 Extraordinary Dividends and Other Distributions
0780-1-67-.04 Forms – General Requirements	0780-1-67-.18 Adequacy of Surplus
0780-1-67-.05 Forms – Incorporation by Reference, Summaries and Omissions	0780-1-67-.19 Severability Clause
0780-1-67-.06 Forms – Information Unknown or Unavailable and Extensions of Time to Furnish	Appendix A Form A – Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer
0780-1-67-.07 Forms – Additional Information and Exhibits	Appendix B Form B – Insurance Holding Company System Annual Registration Statement
0780-1-67-.08 Acquisition of Control – Statement Filing	Appendix C Form C – Summary of Registration Statement
0780-1-67-.09 Amendments to Form A	Appendix D Form D – Prior Notice of a Transaction
0780-1-67-.10 Acquisition of Domestic Insurers	Appendix E Form E – Pre-Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer
0780-1-67-.11 Pre-Acquisition Notification	
0780-1-67-.12 Annual Registration of Insurers – Statement Filing	
0780-1-67-.13 Summary of Registration	
0780-1-67-.14 Alternative and Consolidated Registrations	

0780-1-67-.01 AUTHORITY.

This Chapter is promulgated pursuant to the authority granted by T.C.A. §§56-2-301 and 56-11-209.

Authority: T.C.A. §§56-2-301 and 56-11-209.

0780-1-67-.02 PURPOSE.

The purpose of this Chapter is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Insurance Holding Company System Act of 1986, T.C.A. § 56-11-201, *et seq.* The information called for by this Chapter is hereby declared to be in the public interest and necessary and appropriate for the protection of the policyholders in this State.

Authority: T.C.A. §§56-2-301 and 56-11-209.

0780-1-67-.03 DEFINITIONS.

The following terms are defined as used herein, and, to the extent it is not inconsistent, in the Insurance Holding Company System Act of 1986, as amended, as well.

- (1) "Acquisition" includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a domestic insurance company or an ultimate controlling person or ultimate controlling business entity resulting from a redemption of voting securities.
- (2) "Act" means the Insurance Holding Company System Act of 1986, as amended, Tenn. Code Ann. " 56-11-201, *et seq.*
- (3) "Acting in concert" includes knowing participation in a joint activity or parallel action towards a common goal of acquiring control, directly or indirectly, of a domestic insurance company whether or not pursuant to an express agreement.
 - (a) For purposes of the Act, the following persons shall be presumed to be acting in concert for purposes of this subpart:
 - (i) A company and any controlling shareholder, partner, trustee, or management official of the company, if both the company and the person own voting securities of the insurance company or a company in the insurance holding company system;
 - (ii) An individual and the individual's immediate family;
 - (iii) Companies under common control;
 - (iv) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the direct or indirect acquisition, voting, or transfer of control of voting securities of a domestic insurance company;
 - (v) Persons that have made, or propose to make, a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission; and

- (vi) A person and any trust for which the person serves as trustee.
- (b) The presumption established in this paragraph may be rebutted under the same procedures enumerated in T.C.A. §56-11-205(k).
- (4) “Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (5) “Department” means the Tennessee Department of Commerce and Insurance.
- (6) “Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- (7) “Immediate family” includes a person’s father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person’s spouse.
- (8) “Insurer” means any insurance company or health maintenance organization required to comply with the provisions of the Act.
- (9) “Ultimate controlling person” means any person which is not controlled by any other person.
- (10) “Ultimate controlling business entity” means any business entity which is not controlled by another business entity.
- (11) Unless the context otherwise requires, other terms found in this Chapter and in T.C.A. §§56-11-201, *et seq.*, are used as defined in the Act. Other nomenclature or terminology is according to Tenn. Code Ann. Title 56, or industry usage if not defined by Tenn. Code Ann. Title 56.

Authority: T.C.A. §§56-2-301, 56-11-201 and 56-11-209.

0780-1-67-.04 FORMS – GENERAL REQUIREMENTS.

- (1) Forms A, B, C, D and E are intended to be guides in the preparation of the statements required by T.C.A. §§56-11-203 through 56-11-206. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the test of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.
- (2) One (1) copy of each statement using Forms B, C and D, and three (3) copies of statements using Form A and E shall be filed with the Commissioner by personal delivery or mail addressed to: Insurance Division of the Department of Commerce and Insurance, State of Tennessee, 500 James Robertson Parkway, Nashville, Tennessee 37243, Attention: Director Analytical Section. Each copy shall include all exhibits and other papers and documents filed as a part of the statement. A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the commissioner of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file such form. At least one (1) of the copies shall be manually stamped or otherwise conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

- (3) Statements should be prepared on paper 8 1/2" x 11" or 8 1/2" x 14" in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Authority: T.C.A. §§56-2-301, 56-11-203 through 56-11-206 and 56-11-209.

0780-1-67-.05 FORMS - INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS.

- (1) Information required by an item of Form A, Form B, Form D or Form E may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D or Form E provided the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.
- (2) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the documents being filed.

Authority: T.C.A. §§56-2-301, 56-11-203 through 56-11-206 and 56-11-209.

0780-1-67-.06 FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH.

- (1) Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:
 - (a) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and
 - (b) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to that person for the information.

- (2) If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commissioner a separate document:
 - (a) Identifying the information, document or report in question;
 - (b) Stating why the filing thereof at the time required is impractical; and
 - (c) Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within sixty (60) days after receipt thereof enters an order denying the request.

Authority: T.C.A. §§56-2-301 and 56-11-209.

0780-1-67-.07 FORMS - ADDITIONAL INFORMATION AND EXHIBITS.

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D and Form E, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D or E shall include on the top of the cover page the phrase: "Change No. [insert number] to" and shall indicate the date of the change and not the date of the original filing.

Authority: T.C.A. §§56-2-301, 56-11-203-206 and 56-11-209.

0780-1-67-.08 ACQUISITION OF CONTROL - STATEMENT FILING.

- (1) A statement filed pursuant to the requirements of T.C.A. §56-11-203 shall not be considered to be complete until the filing party furnishes the Commissioner the following:
 - (a) All of the information required on the Form A, hereby made a part of this Chapter as Appendix A;
 - (b) All of the information required on the Form E, hereby made a part of this Chapter as Appendix E;
 - (c) All other information requested by the Commissioner of the requesting party which is deemed necessary in order to determine whether any of the grounds for denial of the merger or acquisition enumerated in T.C.A. §56-11-203 exist; and
 - (d) A non-refundable filing fee in the amount set forth in T.C.A. §56-4-101(a)(1).

Authority: T.C.A. §§56-2-301, 56-11-203, and 56-11-209.

0780-1-67-.09 AMENDMENTS TO FORM A.

The applicant shall promptly advise the Commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Commissioner's disposition of the application.

Authority: T.C.A. §§56-2-301, 56-11-203 and 56-11-209.

0780-1-67-.10 ACQUISITION OF DOMESTIC INSURERS.

- (1) If the person being acquired is deemed to be a “domestic insurer” solely because of the provisions of T.C.A. § 56-11-203(a), the name of the domestic insurer on the cover page should be indicated as follows:

“ABC Insurance Company, a subsidiary of XYZ Holding Company.”

- (2) Where a T.C.A. § 56-11-203(a) insurer is being acquired, references to “the insurer” contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Authority: T.C.A. §§56-2-301, 56-11-203(a) and 56-11-209.

0780-1-67-.11 PRE-ACQUISITION NOTIFICATION.

- (1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to T.C.A. § 56-11-203(a)(1) that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to Tenn. Code Ann. § 56-11-204(c)(1).
- (2) Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to T.C.A. § 56-11-204 that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of T.C.A. § 56-11-204 as set forth in T.C.A. § 56-11-204(b)(2).
- (3) In addition to the information required by Form E, the Commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

Authority: T.C.A. §§56-2-301, 56-11-203(a)(1), 56-11-204 and 56-11-209.

0780-1-67-.12 ANNUAL REGISTRATION OF INSURERS - STATEMENT FILING.

An insurer required to file an annual registration statement pursuant to T.C.A. § 56-11-205 shall furnish the required information on Form B, hereby made a part of this Chapter as Appendix B.

Authority: T.C.A. §§56-2-301, 56-11-205 and 56-11-209.

0780-1-67-.13 SUMMARY OF REGISTRATION - STATEMENT FILING.

An insurer required to file an annual registration statement pursuant to T.C.A. § 56-11-205 is also required to furnish information required on Form C, hereby made a part of this Chapter as Appendix C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.

Authority: T.C.A. §§56-2-301, 56-11-205 and 56-11-209.

0780-67-1-.14 ALTERNATIVE AND CONSOLIDATED REGISTRATIONS.

- (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under T.C.A. § 56-11-205. A registration statement may include information not required by the

Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

- (a) The statement or report contains substantially similar information required to be furnished on Form B; and
 - (b) The filing insurer is the principal insurance company in the insurance holding company system.
- (2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.
 - (3) With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (1) above.
 - (4) Any insurer may take advantage of the provisions of T.C.A. § 56-11-205(h) and (i) without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

Authority: T.C.A. §§56-2-301, 56-11-205(h) and (i) and 56-11-209.

0780-1-67-.15 DISCLAIMERS AND TERMINATION OF REGISTRATION.

- (1) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:
 - (a) The number of authorized, issued and outstanding voting securities of the subject;
 - (b) With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
 - (c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
 - (d) A statement explaining why the person should not be considered to control the subject.
- (2) A request for termination of registration shall be deemed to have been granted unless the Commissioner, within thirty (30) days after receipt of the request, notifies the registrant otherwise.

Authority: T.C.A. §§56-2-301, 56-11-205(k) and 56-11-209.

0780-1-67-.16 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING.

AN INSURER REQUIRED TO GIVE NOTICE OF A PROPOSED TRANSACTION PURSUANT TO T.C.A. § 56-11-206 SHALL FURNISH THE REQUIRED INFORMATION ON FORM D, HEREBY MADE A PART OF THIS CHAPTER AS APPENDIX D.

Authority: T.C.A. §§56-2-301, 56-11-206 and 56-11-209.

0780-1-67-.17 EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS.

- (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
 - (a) The amount of the proposed dividend;
 - (b) The date established for payment of the dividend;
 - (c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
 - (d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
 1. (i) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurers own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
 - (ii) Surplus as regards policyholders (total capital and surplus) as of the thirty-first (31st) day of December next preceding;
 - (iii) If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the thirty-first (31st) day of December next preceding;
 - (iv) If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the thirty-first (31st) day of December next preceding and the two (2) preceding twelve (12) month periods; and
 - (v) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years;
 - (e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
 - (f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- (2) Subject to T.C.A. §56-11-206(b), each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within five (5) business days following the declaration thereof, and at least ten (10) days prior to their payment, including the same information required by subparagraph (1)(d) of this rule.

Authority: T.C.A. §§56-2-301, 56-11-206 and 56-11-209.

0780-1-67-.18 ADEQUACY OF SURPLUS.

The factors set forth in T.C.A. § 56-11-206(d) are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Authority: T.C.A. §§56-2-301, 56-11-206(d) and 56-11-209.

0780-1-67-.19 SEVERABILITY CLAUSE.

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to that end the provisions of this Chapter are severable.

Authority: T.C.A. §§56-2-301 and 56-11-209.

APPENDIX A**FORMA****STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER**

<Name of Domestic Insurer>

by

<Name of Acquiring Person>

Filed with the Tennessee Department of Commerce and Insurance

SEND ALL CORRESPONDENCE TO:

<Name of Contact for Acquiring Person>

<Title of Contact>

<Address>

<Phone Number>

ITEM 1. METHOD OF ACQUISITION

State the names and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

- (a) State the name and address of the applicant seeking to acquire control over the insurer.
- (b) If the applicant is not an individual, state the nature of its business operations for the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
- (c) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than one-half of one percent (.5%) of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings

involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

Provide a completed NAIC Biographical Data Form for

- (1) The applicant, if (s)he is a natural person; or
- (2) All persons who are directors, executive officers or owners of ten percent (10%) or more of the voting securities of the applicant if the applicant is not a natural person.

All such persons should also file a notarized statement attesting to the accuracy of the information contained in the NAIC Biographical Data Form.

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

- (a) Describes the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for this purpose of acquiring, holding or trading securities furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.
- (b) Explain the criteria used in determining the nature and amount of such consideration.
- (c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in ITEM 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in ITEM 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in ITEM 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in ITEM 3 during the twelve (12) calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in ITEM 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in ITEM 3 during the twelve (12) calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

- (a) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) The financial statements shall include the annual financial statements of the persons identified in ITEM 2(c) for the preceding five (5) fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

- (c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by FORM A or Rules 0780-1-67-.04 and 0780-1-67-.06.

ITEM 13. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of T.C.A. §56-11-203, <Applicant> has caused this application to be duly signed on its behalf in the City of _____ in the State of _____; on this the _____ day of _____, _____.

(SEAL) _____
Name of Applicant

BY _____
<Name and Title>

Attest:

<Signature of Officer>

<Title>

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, _____ for and on behalf of _____ <Name of Applicant>; that (s)he is the _____ <Title of Officer> of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

<Signature>

<Print Name>

APPENDIX B

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Tennessee Department of Commerce and Insurance

by

<Name of Registrant>

on Behalf of the Following Insurance Companies:

<Names and Addresses of Insurance Companies>

Date:

SEND ALL CORRESPONDENCE TO:

<Name of Contact for Registrant>

<Title of Contact>

<Address>

<Phone Number>

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each Registrant became part of this insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than one-half of one percent (.5%) of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding \$<amount>. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person and any affiliates or persons who control a company in the insurance holding company system furnish the following information:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure of the person (i.e. corporation, partnership, individual, trust, etc.);
- (e) The principal place of business of the person;

- (f) The name and addressee of any person who holds ten percent (10%) or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and
- (g) If there are court proceedings involving a reorganization or liquidation currently pending, indicate the title and location of the court, the nature of the proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Provide a completed National Association of Insurance Commissioner (“NAIC”) Biographical Data Form for all persons who are directors, executive officers or owners of ten percent (10%) or more of the voting securities of the ultimate controlling person if the ultimate controlling person is not a natural person, or of any person or affiliate who controls a company in the insurance holding company system. All such persons should also file a notarized statement attesting to the accuracy of the information contained in the NAIC Biographical Data Form.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between this Registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant’s assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant’s business;
- (e) All management agreements, service contracts and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and
- (i) Any pledge of the Registrant’s stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material, as discussed in T.C.A. §56-11-205(d).

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent (.5%) or less of the Registrant’s admitted assets as of the thirty-first (31st) day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the Registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Give a brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officer was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior years annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

The financial statements should include the annual financial statements of the ultimate controlling person in the insurance holding company system as well as each person or affiliate which controls a company in the insurance holding company system as of the end of each such person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position each person and the results of their operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law.

Any person who is required to file under this item need not file certified financial statements if such person is an insurer which is actively engaged in the business of insurance in another state, and have filed certified annual financial statements in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulation of that state

ITEM 9. FORM C REQUIRED

A FORM C, Summary of Registration Statement, must be prepared and filed with this FORM B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of T.C.A. §56-11-205, <Registrant> has caused this application to be duly signed on its behalf in the City of _____ in the State of _____; on this the _____ day of _____, _____.

(SEAL) _____
Name of Applicant

BY _____
<Name and Title>

Attest:

<Signature of Officer>

<Title>

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, _____ for and on behalf of _____ <Name of Applicant>; that (s)he is the _____ <Title of Officer> of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

<Signature>

<Print Name>

APPENDIX C

FORM C

SUMMARY OF REGISTRATION STATEMENT

Filed with the Tennessee Department of Commerce and Insurance

by

<Name of Registrant>

on Behalf of the Following Insurance Companies:

<Names and Addresses of Insurance Companies>

Date:

SEND ALL CORRESPONDENCE TO:

<Name of Contact for Registrant>

<Title of Contact>

<Address>

<Phone Number>

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under ITEM 2 of FORM B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of ten percent (10%) or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under ITEM 4 of FORM B need any be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling persons.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of T.C.A. §56-11-205, <Registrant> has caused this application to be duly signed on its behalf in the City of _____ in the State of _____; on this the _____ day of _____, _____.

(SEAL) _____
Name of Applicant

BY _____
<Name and Title>

Attest:

<Signature of Officer>

<Title>

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, _____ for and on behalf of _____ <Name of Applicant>; that (s)he is the _____ <Title of Officer> of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

<Signature>

<Print Name>

APPENDIX D

FORM D

PRIOR NOTICE OF A TRANSACTION

Filed with the Tennessee Department of Commerce and Insurance

by

<Name of Registrant>

On Behalf of Following Insurance Companies:

<Names and Addresses of Insurance Companies>

Date:

SEND ALL CORRESPONDENCE TO:

<Name of Contact for Registrant>
<Title of Contact>
<Address>
<Phone Number>

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure (i.e. cooperation, partnership, individual, trust, etc.);
- (e) A description of the nature of the parties' business operation;
- (f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and
- (g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under (A), (B), (C), (D), or (E) of T.C.A. §56-11-206(a)(1);
- (b) A statement of the nature of the transaction; and
- (c) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or (b) in the case of life insurers, three percent (3%) of the insurer's admitted assets, each as of the thirty-first (31st) day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five (25%) of surplus as regards policyholders or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of the thirty-first (31st) day of December next preceding.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by T.C.A. §56-11-206(a)(2)(c), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than five percent (5%) of the insurer's surplus as regards policyholders, as of the thirty-first (31st) day of December next preceding

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST SHARING ARRANGEMENTS.

For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed; and
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement;

- (b) A description of the period of time during which the agreement is to be in effect;
- (c) A brief description of each party's expenses or costs covered by the agreement; and
- (d) A brief description of the accounting basis to be used in calculating each party's as costs under the agreement.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of T.C.A. §56-11-206, <Applicant> has caused this application to be duly signed on its behalf in the City of _____ in the State of _____; on this the _____ day of _____, _____.

(SEAL) _____
Name of Applicant

BY _____
<Name and Title>

Attest:

<Signature of Officer>

<Title>

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, _____ for and on behalf of _____ <Name of Applicant>; that (s)he is the _____ <Title of Officer> of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

<Signature>

<Print Name>

APPENDIX E

FORM E

**PRE-NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC INSURER**

Filed with the Tennessee Department of Commerce and Insurance

by

<Name of Applicant>

Name of Other Person
Involved in Merger or
Acquisition

Date:

SEND ALL CORRESPONDENCE TO:

<Name of Contact for Registrant>
<Title of Contact>
<Address>
<Phone Number>

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the names and addresses of the persons affiliated with those listed in ITEM 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in response to ITEM 1 and ITEM 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market the persons identified in ITEM 1 and ITEM 2 currently enjoy in this state. Provide historical market and market share data for each person identified in ITEM 1 and ITEM 2 for the past five (5) years and identify the source of such data.

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002.) 09-58)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of proposed rules, amendments of rules in Chapter 0780-1-56, and the repeals of Chapters 0780-1-16, 0780-1-42 and 0780-1-45. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Conference Room A, on the Fifth Floor of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow 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 Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact John F. Morris, Staff Attorney, at (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-74

PRE-LICENSING EDUCATION AND EXAMINATION REQUIREMENTS FOR INSURANCE PRODUCERS

NEW RULES

TABLE OF CONTENTS

0780-1-74-.01 Pre-licensing Education Requirements	0780-1-74-.03	Agents for Health Maintenance Organizations
0780-1-74-.02 Examination Requirements		

0780-1-74-.01 PRE-LICENSING EDUCATION REQUIREMENTS.

- (1) All applicants for an insurance producer license, unless otherwise exempted by law, are required to attend a pre-licensing course of study prior to taking the examination required.
- (2) The pre-licensing course taken by the applicant must be approved by the Commissioner and consist of no less than eighty percent (80%) instructional/classroom hours and no more than twenty percent (20%) self-study hours.

- (3) The amounts of total hours which an insurance producer is required to take are listed as follows:

Lines of Insurance	Number of Hours
Life	20
Accident and Health	20
Property	20
Casualty	20
Personal	30

- (4) The applicant shall certify to the Commissioner in or with the application for insurance producer license that such applicant has completed a pre-licensing course of study approved by the Commissioner for each line of insurance for which an insurance producer license is requested.

Authority: 2002 Tenn. Pub. Acts ch. 798, § 25.

0780-1-74-.02 EXAMINATION REQUIREMENTS.

- (1) All applicants for an insurance producer license, unless otherwise exempted by law, are required to pass a written examination in order to test the applicant’s knowledge as to the line of insurance for which a license is applied, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. There shall be a separate examination for each line of insurance in which an insurance producer may be licensed. Applicants wishing to be licensed as an insurance producer in more than one line of insurance shall take each applicable examination.
- (2) Each examination for a license shall be approved for use by the Commissioner. Examinations for licensing shall be at such reasonable times and places accessible to the applicants as are designated by the Commissioner.
- (3) An individual taking an examination pursuant to this rule shall pay a non-refundable fee in order to take such examination. An individual who takes an examination more than once shall pay the examination fee for each subsequent taking of the examination, regardless of the reason for the subsequent examinations.
- (4) The minimum score that will be considered as a passing score for any examination given hereunder is seventy percent (70%). Any score on an exam below seventy percent (70%) shall be considered a failing score.
 - (a) An individual who has failed to pass an examination for a license applied for may take another examination following the expiration of thirty (30) days from the date of the applicant’s last unsuccessful examination upon submission of the examination fee.
 - (b) An individual who has received a failing score on three (3) successive attempts of taking an examination for a license applied for will not be permitted to take a subsequent examination until the expiration of one (1) year from the date of the taking of the individual’s last unsuccessful examination. After the one (1) year period, the individual may retake the examination upon completing all pre-licensing education requirements enumerated in Rule 0780-1-74-.01. The individual shall also be required to file a new application accompanied by the appropriate filing and examination fees.
- (5) The Commissioner may enter into a contract with a testing organization for the examination of applicants for license as an insurance producer. Notwithstanding any other provisions of this chapter, such contract may provide that the testing organization shall:
 - (a) Assume responsibility for administration and grading of the examination; and

- (b) Charge and collect reasonable non-refundable examination fees, subject to the approval of the Commissioner.
- (6) No individual taking an examination for an insurance producer license shall possess or examine the examination questions and/or answers prior to the time of examination, nor shall any such individual use improper notes or other reference materials during the examination. Furthermore, no person shall have such questions or answers reproduced and/or disseminated for the purposes of assisting an insurance producer in passing an examination.

Authority: 2002 Tenn. Pub. Acts ch. 798, § 25.

0780-1-74-.03 AGENTS FOR HEALTH MAINTENANCE ORGANIZATIONS.

All agents of health maintenance organizations, as that term is defined in Tenn. Code Ann. §56-32-214(a), must obtain an insurance producer license in the line of accident and health insurance prior to acting as an agent. Such persons are required to meet all requirements for licensure, to include, but not necessarily be limited to, the requirements under Tenn. Code Ann. Title 56, Chapter 6, as well as any other rules or regulations promulgated by the Commissioner, such as any pre-licensing and continuing education requirements, examination requirements.

Authority: T.C.A. §56-32-214.

CHAPTER 0780-1-16 WRITTEN EXAMINATION FOR AGENTS

REPEAL

Chapter 0780-1-16 Written Examination for Agents is repealed.

Authority: T.C.A. §56-6-127 and Tenn. Pub. Acts 2002, ch. 798, § 25.

CHAPTER 0780-1-42 RELATING TO EDUCATIONAL REQUIREMENTS FOR LIFE, ACCIDENT AND HEALTH INSURANCE AGENTS

REPEAL

Chapter 0780-1-42 Relating to Educational Requirements for Life, Accident and Health Insurance Agents is repealed.

Authority: T.C.A. §§56-6-105 and 56-6-107 and Tenn. Pub. Acts 2002, ch. 798, § 25.

CHAPTER 0780-1-55 INSURANCE AGENT AND LIMITED INSURANCE REPRESENTATIVE LICENSING

REPEAL

Chapter 0780-1-55 Insurance Agent and Limited Insurance Representative Licensing is repealed.

Authority: T.C.A. §§56-6-160, 56-6-136 through 56-6-138, 56-6-142 through 56-6-143 and Tenn. Pub. Acts 2002, ch. 798, ‘ 25.

CHAPTER 0780-1-56 EDUCATIONAL REQUIREMENTS

AMENDMENTS

Chapter 0780-1-56 Educational Requirements is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and substituting instead the abbreviation “Tenn. Code Ann.”.

Rule 0780-1-56-.01 Purpose is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0780-1-56-.01 PURPOSE.

The purpose of this chapter is to prescribe the continuing education requirements for insurance producers and agents of health maintenance organizations, as well as to establish standards by which continuing education courses will be evaluated for awarding of credit, and to ensure compliance of these requirements by establishing periodic reporting requirements.

Authority: T.C.A. §§56-6-160(a)(2) and 56-32-214.

Rule 0780-1-56-.02 Basic Requirements is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

RULE 0780-1-56-.02 BASIC CONTINUING EDUCATION REQUIREMENTS.

- (1) Every individual seeking annual renewal of a license issued pursuant to Tenn. Code Ann. Title 56, Chapter 6, Part 1, must satisfactorily complete twelve (12) hours of study in approved courses, programs of instruction or seminars each year following the date of issuance of the original license. Certificates of completion for courses previously submitted and approved for credit may be repeated after three (3) years and submitted for credit.
- (2) Any individual who became or becomes licensed as an insurance agent or insurance producer after January 1, 1997, shall comply with the continuing education requirements of this chapter.
- (3) Any individual who became licensed prior to January 1, 1997 may elect to comply with continuing education requirements by filing with the Department of Commerce and Insurance a form prescribed by the Commissioner. Any individual making an election shall then comply with all the continuing education requirements of this chapter.

Authority: T.C.A. §§56-6-160(a)(2) and 56-32-214.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002. (09-59)

THE TENNESSEE BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 19th day of November, 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 0460-1-.02, Fees, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

(1)(e)Permit Fees - (limited conscious sedation, comprehensive conscious sedation, deep sedation/general anesthesia)
Payable each time an application for a new permit or a biannual renewal of a permit is filed.

1.	Initial Permit Fee	\$ 300.00
2.	Biennial Permit Renewal Fee	\$ 100.00

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-108.

Rule 0460-1-.05, Continuing Education, is amended by adding the following language as new subparagraph (1) (e) and renumbering the remaining subparagraph accordingly:

(1) (e) Notwithstanding the provisions of subparagraph (3) (d), all continuing education courses intended to meet the requirements of rules 0460-2-.07 (6) (a) 1. (ii), 0460-2-.07 (6) (a) 2. (ii), and 0460-2-.07 (8) (b) shall have prior approval by an Anesthesia Consultant as provided in rule 0460-2-.07 (11).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-108.

Rule 0460-1-.08, Dental Professional Corporations (D.P.C.), is amended by deleting paragraphs (1), (2), (3), (4), and (5) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (6) through (17) in their entirety, so that as amended, the new paragraphs (1), (2), (3), (4), and (5) shall read:

- (1) Dental Professional Corporations (D.P.C.)— Except as provided in this rule Dental Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
- (2) Filings – A D.P.C. need not file its Charter or its Annual Statement of Qualifications with the Board.
- (3) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a D.P.C.:
 - (a) Dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5; and/or
 - (b) A general partnership in which all partners are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5; and/or
 - (c) A D.P.C. in which all shareholders are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or composed of entities which are directly or indirectly owned by such licensed dentists; and/or
 - (d) A Dental Professional Limited Liability Company (D.P.L.L.C.) in which all members are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or composed of entities which are directly or indirectly owned by such licensed dentists; and/or
 - (e) A foreign D.P.C. or D.P.L.L.C. in which all shareholders/members are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or composed of entities which are directly or indirectly owned by such licensed dentists.
- (4) Officers and Directors of Dental Professional Corporations –
 - (a) All, except the following officers, must be dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5:
 1. Secretary;
 2. Assistant Secretary;
 3. Treasurer; and
 4. Assistant Treasurer.
 - (b) With respect to members of the Board of Directors, only dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 shall be directors of a D.P.C.
- (5) Corporate Practice Limitations
 - (a) A dentist shall not enter into an employment, compensation, or other contractual arrangement with a D.P.C. that may violate the code of ethics or which gives the D.P.C. authority over the dentist's diagnosis, treatment and/or referral decisions.
 - (b) Engaging in, or allowing another dentist incorporator, shareholder, officer, or director, while acting on behalf of the D.P.C., to engage in, dental practice in any area of practice or specialty beyond that which

is specifically set forth in the charter may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-5-124.

- (c) Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a D.P.C.
- (d) Nothing in these rules shall be construed as prohibiting a D.P.C. from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent dental judgment by the dentist incorporators, directors, officers, shareholders, employees or contractors of the D.P.C. who are practicing dentistry as defined by Tennessee Code Annotated, 63-5-108.
- (e) Nothing in these rules shall be construed as prohibiting a dentist from owning shares of stock in any type of professional corporation other than a D.P.C. so long as such ownership interests do not interfere with the exercise of independent dental judgment by the dentist while practicing dentistry as defined by Tennessee Code Annotated, 63-5-108.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-501, 48-248-601, 48-428-602, 48-248-603, 63-5-105, 63-5-108, and 63-5-124.

Rule 0460-1-.09, Dental Professional Limited Liability Companies (D.P.L.L.C.), is amended by deleting paragraphs (1), (2), (3), (4), (5), (6), and (7) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (8) in its entirety, so that as amended, the new paragraphs (1), (2), (3), (4), (5), (6), and (7) shall read:

- (1) Dental Professional Limited Liability Companies (D.P.L.L.C.) - Except as provided in this rule Dental Professional Limited Liability Companies shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 248.
- (2) Filings –Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
- (3) Membership– With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-428-401 only the following may members of an foreign or domestic D.P.L.L.C. doing business in Tennessee:
 - (a) Dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5; and/or
 - (b) A general partnership in which all partners are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 and/or
 - (c) A D.P.C. in which all shareholders are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or composed of entities which are directly or indirectly owned by such licensed dentists; and/or
 - (d) A Dental Professional Limited Liability Company (D.P.L.L.C.) in which all members are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or composed of entities which are directly or indirectly owned by such licensed dentists; and/or

- (e) A foreign D.P.C. or D.P.L.L.C. in which all shareholders/members are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or composed of entities which are directly or indirectly owned by such licensed dentist.
- (2) Managers or Governors of a D.P.L.L.C.
- (a) All, except the following managers, must be dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5:
 - 1. Secretary
 - 2. Treasurer
 - (b) Only dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 shall be serve on the Board of Governors of a D.P.L.L.C..
- (3) Practice Limitations
- (a) A dentist shall not enter into an employment, compensation, or other contractual arrangement with a D.P.L.L.C. that may violate the code of ethics or which gives the D.P.L.L.C. authority over the dentist's diagnosis, treatment and/or referral decisions.
 - (b) Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a D.P.L.L.C.
 - (c) Nothing in these rules shall be construed as prohibiting a D.P.L.L.C. from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent dental judgment by the dentist members, governors, officers, employees or contractors of the D.P.C. who are practicing dentistry as defined by Tennessee Code Annotated, 63-5-108.
 - (d) Nothing in these rules shall be construed as prohibiting a dentist from being members of any type of professional limited liability company other than a D.P.L.L.C. so long as such membership interests do not interfere with the exercise of independent dental judgment by the dentist while practicing dentistry as defined by Tennessee Code Annotated, Section, 63-5-108.
 - (e) All D.P.L.L.C.s formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 to provide services only in states other then Tennessee shall annually file with the Board a notarized statement that it is not providing services in Tennessee.
- (6) Dissolution - The procedure that the Board shall follow to notify the attorney general that a D.P.C. or a D.P.L.L.C. has violated or is violating any provision of Title 48 Chapters 101 and/or 248 shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Section, 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the D.P.C. and/or D.P.L.L.C. or the secretary of state if one of the events described in Tennessee Code Annotated, Section 48-208-104 or a violation of the provisions of Tennessee Code Annotated, Title 48, Chapter 248 occurs.

- (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the D.P.C. and/or D.P.L.L.C. must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the D.P.C. and/or D.P.L.L.C. is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48, Chapter, Part 9
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provision of the Uniform Administrative Procedures Act, compiled in Title 4, chapter 5 but that the D.P.C. and/or D.P.L.L.C., through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the it is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a D.P.C. and/or D.P.L.L.C. did violate any provision of title 48, chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) – (3) and/or 248-409 (1)-(3).
- (7) Violation of this rule by any dentist individually or collectively while acting as a D.P.C. or as a D.P.L.L.C. may subject the dentist(s) to disciplinary action pursuant to Tennessee Code Annotated, Sections 63-5-124.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-501, 48-248-601, 48-428-602, 48-248-603, 63-5-105, 63-5-108, and 63-5-124.

Rule 0460-1-.10, Repealed, is amended by deleting the catchline and substituting instead the following new catchline, and is further amended by adding the following language as a new introductory sentence and as new paragraphs (1) through (14):

0460-1-.10 INFECTION CONTROL.

- (1) The dentist shall ensure that at least one (1) of the following sterilization procedures is utilized daily for instruments and equipment:
 - (a) Steam autoclave
 - (b) Dry-heat
 - (c) Chemical vapor
 - (d) Ethylene oxide

- (e) Disinfectant/chemical sterilant. U.S. Environmental Protection Agency (EPA) approved disinfectant shall be used in dilution amounts and time periods.
- (2) The following instruments, unless disposable, shall be sterilized between patients, after removal of debris, by one (1) of the above methods provided in paragraph (1):
- (a) Low speed handpiece contra angles, prophy angles and nose cone sleeves
 - (b) High speed handpieces and surgical handpieces
 - (c) Hand and orthodontic instruments
 - (d) Burs and bur changers, including contaminated laboratory burs and diamond abrasives
 - (e) Endodontic instruments
 - (f) Air-water syringe tips
 - (g) High volume evacuator tips
 - (h) Sonic or ultrasonic scalers and tips
 - (i) Surgical instruments
 - (j) Electro-surgery tips
 - (k) Metal impression trays
 - (l) Intra-oral radiographic equipment that can withstand heat sterilization
- (3) All heat sterilizing devices must be tested for proper function by means of a biological monitoring system that indicates microorganism kill. The biological monitoring system used must include a control to verify proper microbial incubation. In the event of a positive biological spore test, the dentist must take immediate action to ensure that heat sterilization is being accomplished. Immediate action is defined as following manufacturer guidelines and performing a second (2nd) biological spore test. In the event a second (2nd) positive biological spore test occurs, the device must be removed from service until repaired. Proof of such repair must be maintained with the testing documentation.
- (4) Documentation must be maintained on all heat sterilizing devices in a log reflecting dates and person(s) conducting the testing, or by retaining copies of reports from an independent testing entity. The documentation shall be maintained for a period of at least two (2) years, and shall be maintained in the dental office and be made immediately available upon request by an authorized agent of the Tennessee Department of Health.
- (5) Environmental surfaces that are contaminated by blood or saliva must be properly cleaned prior to disinfecting. Disinfection must be accomplished with an appropriate disinfectant that is registered with the EPA and used in accordance with the manufacturer's instructions. The disinfection process must be followed between each patient.
- (6) Impervious backed paper, aluminum foil or plastic wrap must be used to cover surfaces or items that may be contaminated by blood or saliva and that are difficult or impossible to disinfect. The cover must be removed, discarded, and then replaced between patients.

- (7) All single use or disposable items, labeled as such, used to treat a patient must be discarded and not reused.
- (8) Items such as impressions contaminated with blood or saliva must be thoroughly rinsed, placed in, and transported to the dental laboratory in an appropriate case containment device that is properly sealed and labeled "Treat As Infectious Material".
- (9) Oral prosthetic appliances received from a dental laboratory must be washed with soap or a detergent and water, rinsed well, appropriately disinfected, and rinsed well again before the prosthetic appliance is placed in the patient's mouth.
- (10) Surgical or examination gloves and surgical masks shall be worn by all dentists, dental hygienists and dental assistants while performing, or assisting in the performance, of any intra-oral dental procedure on a patient in which contact with blood and/or saliva is imminent. Surgical or examination gloves must be changed between patients. Hands shall be washed with antimicrobial soap and water and dried immediately after removing and prior to replacing gloves. Gloves are never to be washed and reused. Surgical or examination gloves that are punctured or torn must be removed and replaced immediately with new gloves following rewashing of the practitioner's hands with antimicrobial soap and water. Eye protection must be worn by all dentists, dental hygienists, and dental assistants while performing, or assisting in the performance of, any dental procedure on a patient in accordance with CDC recommendations.
- (11) To minimize the need for emergency mouth-to-mouth resuscitation, a practitioner shall ensure that mouthpieces, resuscitation bags, or other ventilation devices, appropriate to the patient population served, are available.
- (12) All dental health care workers shall take appropriate precautions pursuant to TOSHA's "Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens Standard", or its successor to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. If a needlestick injury occurs, the dentist shall comply with the requirements established by TOSHA.
- (13) All sharp items and contaminated wastes must be packaged and disposed of according to the requirements established by any federal, Tennessee state, and/or local government agencies which regulate health or environmental standards.
- (14) All dental health care workers who have exudative lesions or weeping dermatitis shall refrain from contact with equipment, devices, and appliances that may be used for or during patient care, where such contact holds potential for blood or body fluid contamination, and shall refrain from all patient care and contact until condition(s) resolves unless barrier techniques would prevent patient contact with the dental health care worker's blood or body fluid.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-5-105, 63-5-108, and 63-5-115.*

Rule 0460-1-.16, Repealed, is amended by deleting the catchline and substituting instead the following new catchline, and is further amended by adding the following language as a new introductory sentence and as new paragraphs (1) through (10):

Each patient shall, at a minimum, be afforded the following rights:

- (1) To be treated with respect, consideration and dignity.
- (2) To privacy in treatment.

- (3) To have their records kept confidential and private.
- (4) To be provided information concerning their diagnosis, evaluation, treatment options and progress.
- (5) An opportunity to participate in decisions involving their health care.
- (6) To refuse any diagnostic procedure or treatment and be advised of the medical consequences of that refusal.
- (7) To obtain a copy of their personal dental record.
- (8) To have appropriate assessment and management of pain.
- (9) To be free from mental and physical abuse. Should this right be violated, the dentist must notify the Tennessee Department of Human Services, Adult Protective Services or Tennessee Department of Children Services immediately as required by law.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-5-105, and 63-5-124.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of September, 2002. (09-36)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF AIR POLLUTION CONTROL**

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations, and Title V Program pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 18th day of November, 2002.

Written comments will be included in the hearing records if received by the close of business November 18, 2002, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to (November 18, 2002) or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298)

If you have any questions about the origination of this rule change, you may contact Mr. Ron Culberson at 1-800-511-7991. For complete copies of the text of the notice, please contact Mr. Malcolm Butler, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, telephone 615-532-0600.

SUBSTANCE OF PROPOSED CHANGE**CHAPTER 1200-3-26
ADMINISTRATIVE FEES SCHEDULE****AMENDMENT**

Subparagraph (d) of paragraph (9) of rule 1200-3-26-.02 Construction and Annual Emission Fees is amended by deleting the current subparagraph (d) and substituting a new subparagraph (d) in its place with the following language "The rate at which major source actual based annual emission fees are assessed shall be \$28.00 per ton for the annual accounting period July 1, 2002 to June 30, 2003. The rate at which major source allowable based annual emission fees are assessed shall be \$17.00 per ton for the annual accounting period July 1, 2002 to June 30, 2003. An annual revision must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates shall be supported by the Division's annual workload analysis that is approved by the Board." so that, as amended, the new subparagraph shall read:

- (d) The rate at which major source actual based annual emission fees are assessed shall be \$28.00 per ton for the annual accounting period July 1, 2002 to June 30, 2003. The rate at which major source allowable based annual emission fees are assessed shall be \$17.00 per ton for the annual accounting period July 1, 2002 to June 30, 2003. An annual revision must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates shall be supported by the Division's annual workload analysis that is approved by the Board.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of September, 2002. (09-33)

**THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SOLID WASTE MANAGEMENT**

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, acting on behalf of the Tennessee Solid Waste Disposal Control Board, to consider the adoption and promulgation of rules and amendments to rules (revision "w") pursuant to the Tennessee Code Annotated Sections 68-212-106, 68-212-107, 68-212-108, 68-212-109, 68-212-110 and 68-212-114; the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated, Section 68-211-101 et seq; the Tennessee Environmental Protection Fund Act, Tennessee Code Annotated, Section 68-203-101 et seq; the Used Oil Collection Act of 1993, Tennessee Code Annotated, Section 68-211-1001 et seq and the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-101 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place in the 5th Floor Conference Room, L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 PM CST on November 19, 2002.

Individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person or by writing, telephone, or other means, and should be made no less than ten days prior to November 19, 2002 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation, ADA Coordinator, Issac Okoreeh-Baah,

SUMMARY OF PROPOSED RULES

This rulemaking includes multiple and various additions, deletions, and modifications to Rule Chapter 1200-1-11 Hazardous Waste Management and 1200-1-14 Commercial Hazardous Waste Management Facilities. Many of these changes are proposed in response to revisions and additions published in Federal Registers that the U. S. Environmental Protection Agency (EPA) made between October 3, 2001 and April 9, 2002 to the corresponding Federal Regulations. These amendments are intended to make the State's Regulations equivalent to their Federal counterparts. They include certain technical corrections, definitions, housekeeping changes, clarifications, reference changes, typos, and other corrections.

Certain exemptions to the mixture rule, which were inadvertently deleted, are being reinserted. Three inorganic chemical manufacturing wastes, K176, K177, and K178, are being added to the list of hazardous wastes. The Corrective Action Management Unit (CAMU) rule is being amended to facilitate cleanups. Emissions standards vacated by the U. S. Court of Appeals are being temporarily replaced until final standards can be established. Two other Court vacatures, one deleting language classifying mineral processing characteristic byproducts and sludges being reclaimed as solid waste and the second disallowing the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining whether manufactured gas plant (MGP) waste is hazardous, are being implemented.

Housekeeping changes include adding language to Rule Chapter 1200-1-11 and to 1200-1-14 requiring that all fees and penalties owed to the Department by an applicant be paid or at least current, if payments are being made, prior to a permit or other authorization being issued. Further, the applicant/owner/operator, as appropriate, is being required to give additional public notices required by the rules. Small Quantity Handlers of universal waste are also being required to follow the same "Tracking Universal Waste Shipments" procedures set forth for Large Quantity Handlers.

OTHER INFORMATION

The Division has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review only at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Assistance Centers located as follows:

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

Cookeville Environmental Assistance
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Assistance Center
Center
362 Carriage House Drive
Jackson, TN 38305-2222
(731) 512-1300/ 1-888-891-8332

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

Columbia Environmental Assistance Center
Center
2484 Park Plus Drive
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Assistance

Suite 220- State Plaza
2700 Middlebrook Pike
Knoxville, TN 37921
(865)594-6035/ 1-888-891-8332

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

Johnson City Environmental Assistance

2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

Additional review copies only are available at the following library locations:

McIver's Grant Public Library
204 North Mill Street
Dyersburg, TN 38024-4631
(731) 285-5032
Hardin County Library
Library
1013 Main Street
Savannah, TN 38372-1903
(731) 925-4314

W. G. Rhea Public Library
400 West Washington Street
Paris, TN 38242-0456
(731) 642-1702
Clarksville-Montgomery County Public

350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
(931) 648-8826

Coffee County-Manchester Public Library
1005 Hillsboro Highway
Manchester, TN 37355-2099
(931) 723-5143

Art Circle Public Library
154 East First Street
Crossville, TN 38555-4696
(931) 484-6790

E. G. Fisher Public Library
1289 Ingleside Ave.
Athens, TN 37371-1812
(423) 745-7782

Kingsport Public Library & Archives
400 Broad Street
Kingsport, TN 37660-4292
(423) 229-9489

The "DRAFT" rules may also be accessed for review using:

<http://www.state.tn.us/environment/swm/swmppo/rules902.htm>

Copies are also available for review at the Nashville Central Office (see address below). They may be purchased at the central office location only (\$75.00 per copy if picked up or \$84.00 per copy if mailed, which includes shipping and handling, payable in advance).

Tennessee Department of Environment and Conservation
Division of Solid Waste Management
5th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-1535
(615) 532-0780

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Solid Waste Management; Tennessee Department of Environment and Conservation; Attention: Mr. Gerald Ingram; 5th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0850 or FAX 615-532-0886. However, such written comments must be received by the Division by 4:30 PM CST, December 3, 2002 in order to assure consideration. For further information, contact Mr. Gerald Ingram at the above address or telephone number.

The notice of rulemaking set out herein was properly in the Department of State on the 17th day of September, 2002. (09-30)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SUPERFUND**

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee, 37643 on December 5th, 2002 at 7:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

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

Site Number	Site Name
	Carter County (10)
10-513	Sugar Hollow Dump Site Elizabethton, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of September, 2002. (09-18)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 18th day of November 2002.

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

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

SUBSTANCE OF PROPOSED RULE

Rule Chapter 1200-13-1 General Rules is amended by deleting rule 1200-13-1-.17 in its entirety and replacing it with a new rule 1200-13-1-.17 which shall read as follows:

1200-13-1-.17 STATEWIDE HOME AND COMMUNITY BASED SERVICES WAIVER FOR THE ELDERLY AND DISABLED.

- (1) Definitions. The following definitions shall apply for interpretation of this rule:

- (a) Administrative Lead Agency - the approved agency or agencies with which the Bureau of TennCare contracts for the provision of covered services through the Statewide Home and Community Based Services Waiver for the Elderly and Disabled.
- (b) Bureau of TennCare - the Bureau in the Tennessee Department of Finance and Administration which is responsible for administration of the Title XIX Medicaid program.
- (c) Caretaker - one or more adult individuals who sign an agreement with the Administrative Lead Agency to provide services to the Enrollee as outlined in paragraphs (4) and (5) to meet the needs of the Enrollee during the hours when Waiver Services are not being provided by the Administrative Lead Agency.
- (d) Case Management - services which will assist individuals who receive waiver services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services to which access is gained. Case managers shall be responsible for development of the plan of care and for ongoing monitoring of the provision of services included in the individual's plan of care. Case managers shall initiate and oversee the process of assessment and reassessment of the individual's level of care and the review of plans of care.
- (e) Case Management Team - a multi-disciplinary team of health care professionals that assesses an Enrollee's medical, functional, and social needs after enrollment in the Waiver and develops, monitors, and periodically updates a goal-oriented Individual Care Plan based on the Enrollee's needs. The multi-disciplinary team shall be composed of the Case Manager, a physician, a registered nurse, a social worker, and other appropriate health care professionals.
- (f) Case Manager - a person who is responsible for screening potential applicants to determine if they meet the requirements for enrollment in the Waiver; overseeing the development, implementation, and monitoring of an Individual Care Plan based on the Enrollee's medical, functional, and social needs and the Safety Plan; coordinating the provision of Waiver Services and other services regardless of payment source, including securing appropriate service providers; and monitoring to assure that appropriate Waiver Services and other services are being provided; and documenting case management activities.
- (g) Certification - the process by which a physician, who is licensed as a doctor of medicine or doctor of osteopathy, signs and dates a PreAdmission Evaluation signifying that the individual requires services provided through the Statewide Home and Community Based Services Waiver for the Elderly and Disabled as an alternative to care in a Nursing Facility.
- (h) Department - the Tennessee Department of Finance and Administration.
- (i) Denial - as used in regard to Waiver Services, the term shall mean the termination, suspension, delay, or reduction in amount, scope, and duration of a Waiver service or a refusal or failure to provide such service.
- (j) Disenrollment - the voluntary or involuntary termination of enrollment of an individual receiving services through the Statewide Home and Community Based Services Waiver for the Elderly and Disabled.
- (k) Enrollee - a Medicaid Eligible who is enrolled in the Statewide Home and Community Based Services Waiver for the Elderly and Disabled in Tennessee.
- (l) Home (of an Enrollee) - the residence or dwelling in which the Enrollee resides in Tennessee, excluding hospitals, nursing facilities, Intermediate Care Facilities for the Mentally Retarded, Assisted Living Facilities, and Homes for the Aged (Residential Homes for the Aged).

- (m) Home and Community Based Services Statewide Waiver for the Elderly and Disabled - the Home and Community Based Services waiver project approved for Tennessee by the Centers For Medicare and Medicaid Services to provide services to a specified number of Medicaid-eligible individuals who reside in Tennessee, who are aged or disabled, and who meet Medicaid's criteria for placement in a Nursing Facility.
- (n) Home Delivered Meals - nutritionally well-balanced meals, other than those provided under Title III C-2 of the Older Americans Act, that provide at least one third but no more than two-thirds of the current daily Recommended Dietary Allowance (as estimated by the Food and Nutrition Board of Sciences - National Research Council) and that will be served in the Enrollee's home. Special diets shall be provided in accordance with the Individual Plan of Care when ordered by the Enrollee's physician.
- (o) Homemaker Services - services consisting of general household activities and chores (e.g., sweeping, mopping, dusting, making the bed, washing dishes, personal laundry, ironing, mending, and meal preparation and/or education about the preparation of nutritious appetizing meals; assistance with maintenance of a safe environment; and errands essential to the Enrollee's care (e.g., grocery shopping, having prescriptions filled) provided by a trained homemaker when the enrollee is unable to perform such activities and when the individual regularly responsible for these activities is unable to perform such activities for the Enrollee.
- (p) Individual Plan of Care - an individualized written plan of care which serves as the fundamental tool by which the State ensures the health and welfare of Enrollees and which meets the requirements of paragraph (7) herein.
- (q) Medicaid Eligible - an individual who has been determined by the Tennessee Department of Human Services to be financially eligible to have TennCare make reimbursement for covered services.
- (r) Minor Home Modifications - the provision and installation of certain home mobility aides (e.g., ramps, rails, non-skid surfacing, grab bars, and other devices and minor home modifications which facilitate mobility) and modifications to the home environment to enhance safety. Excluded are those adaptations or improvements to the home which are of general utility and which are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc. Adaptations which add to the total square footage of the home are excluded from this benefit. All services shall be provided in accordance with applicable State or local building codes.
- (s) Nursing Facility - a Medicaid-certified nursing facility approved by the Department.
- (t) Personal Care Services - services provided to assist the Enrollee with activities of daily living, and related essential household tasks (e.g. making the bed, washing soiled linens or bedclothes that require immediate attention), and other activities that enable the Enrollee to remain in the home, as an alternative to Nursing Facility care, including the following:
 - 1. Assistance with activities of daily living (e.g., bathing, grooming, personal hygiene, toileting, feeding, dressing, ambulation);
 - 2. Assistance with cleaning that is an integral part of personal care and is essential to the health and welfare of the Enrollee;
 - 3. Assistance with maintenance of a safe environment.
- (u) Personal Emergency Response Systems (PERS) - is an electronic devices which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear

- a portable “help” button to allow for mobility. The system is connected to the person’s phone and programmed to signal a response center once a “help” button is activated. The response center is staffed by trained professionals. PERS services are limited to those individuals who are alone for significant parts of the day, who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.
- (v) “Plain language” - any notice or explanation that requires no more than a sixth grade level of education as measured by the Flesch Index, Fog Index, or Flesch-Kincaid Index.
 - (w) PreAdmission Evaluation (PAE) - a process of assessment approved by the Bureau of TennCare and used to document an individual’s current medical condition and eligibility for care in a Nursing Facility.
 - (x) PreAdmission Screening/Annual Resident Review (PASARR) - the process by which the State determines whether an individual who resides in or seeks admission to a Medicaid-certified Nursing Facility has, or is suspected of having, mental illness or mental retardation, and, if so, whether the individual requires specialized services.
 - (y) Recertification - the process approved by the Bureau of TennCare by which the Enrollee’s physician assesses the medical necessity of continuation of Waiver Services and certifies in writing that the Enrollee continues to require Waiver Services.
 - (z) Respite Care - services provided to individuals unable to care for themselves when there is an absence or need for relief of those persons normally providing the care. Respite services will be furnished on a short-term basis in a nursing facility or assisted care living facility, not to exceed nine (9) days per waiver year. The intent of Respite is to provide short-term relief for caregiver vacations and emergency situations that may involve the temporary loss of a caregiver (e.g. hospitalization, illness of another relative).
 - (aa) Safety Plan - an individualized plan by which the Administrative Lead Agency ensures the health, safety, and welfare of Enrollees who do not have 24-hour caretaker services and which meets the requirements of (5)(c)4.
 - (bb) Screening - the process by which the Administrative Lead Agency determines that an applicant meets the requirements for enrollment in the Home and Community Based Services Statewide Waiver for the Elderly and Disabled. The screening process shall include verifying whether an individual is Medicaid eligible in Tennessee; whether an individual is eligible for care in a Nursing Facility; whether an individual with an approved PreAdmission Evaluation is eligible for Waiver Services; whether the individual’s medical, functional, and social needs can be met through the Waiver; and whether there is a caretaker available.
 - (cc) Subcontractor - an individual, organized partnership, professional corporation, or other legal association or entity which enters into a written contract with the Administrative Lead Agency to provide Waiver Services to an Enrollee.
 - (dd) Urgent care - medical assistance services which the Enrollee or the Enrollee’s representative and the primary care provider or treating specialist have attested are required promptly to prevent substantial deterioration of the individual’s health status and the failure to provide such services promptly is likely to cause substantial harm.
 - (ee) Waiver - the Home and Community Based Services Statewide Waiver for the Elderly and Disabled as approved by the Centers for Medicare and Medicaid Services for the State of Tennessee.

- (ff) Waiver Eligible - a Medicaid eligible resident of Tennessee who has a PreAdmission Evaluation that has been approved by the Bureau of TennCare for nursing facility level of care.
- (gg) Waiver Services - covered services provided through the Statewide Home and Community Based Services Waiver for the Elderly and Disabled as approved by the Centers for Medicare and Medicaid Services for the State of Tennessee.

(2) Waiver Services. Covered Waiver Services shall include the following:

- (a) Case Management. All case management contacts shall be documented in the Enrollee's medical record and shall include one face-to-face visit per month, by a registered nurse or a social worker, with the Enrollee in the Enrollee's home. At least every 90 days, the home visit shall be made by a registered nurse unless otherwise directed in the waiver. Such monthly documentation shall note that the Individual Plan of Care has been reviewed and revised as appropriate.
- (b) Home-delivered Meals.
 - 1. The Administrative Lead Agency shall ensure that providers of home meals are properly licensed or certified by the appropriate regulatory authority and shall require that such providers comply with all laws, ordinances, and codes regarding preparation, handling, and delivery of food.
 - 2. For those Enrollees who require medically prescribed diets, the Administrative Lead Agency shall ensure that such meals are planned by a registered dietitian who provides consultation to the licensed nurse supervising the Enrollee's care.
- (c) Minor Home Modifications.
 - 1. Minor home modifications shall not be provided unless specified in the Individual Plan of Care. The Administrative Lead Agency shall notify the Bureau of TennCare and obtain prior authorization for minor home modifications exceeding \$1,200 prior to initiating the intended modification.
 - 2. The Bureau of TennCare shall be the payor of last resort for minor home modifications.
- (d) Personal Care Services.
 - 1. Personal care aides shall meet the standards of education and training required by the Administrative Lead Agency and approved by the Bureau of TennCare. Enrollees with a diagnosis of mental retardation can only receive personal care services from a licensed home health agency or an agency licensed by the Department of Mental Health and Developmental Disabilities.
 - 2. The personal care aide shall report to the Case Manager any significant changes in the Enrollee's physical or mental status.
- (e) Personal Emergency Response Systems. Personal Emergency Response Systems shall be provided, as specified in the Individual Plan of Care and Safety Plan, for Enrollees:
 - 1. Who receive daily caretaker services but who are alone for significant parts of the day and who would otherwise require extensive routine supervision; and
 - 2. Who, based on an assessment by the Administrative Lead Agency of the Enrollee's mental and physical capabilities, have the capability to effectively utilize such a system.

- (f) Homemaker Services. Homemakers shall meet state standards for education and training.
- (g) Respite Services.
 - 1. Respite care providers must have a good knowledge of basic living skills and knowledge of Basic English, sufficient to write reports, keep records and read instructions.
 - 2. The Administrative Lead Agency shall ensure that providers have the ability to provide residential care, and the ability to prepare required routine written records and reports.
- (3) Documentation of Waiver Services.
 - (a) The Administrative Lead Agency shall ensure that all services are accurately and timely documented.
 - (b) Documentation of Waiver services must adequately demonstrate that services are provided in accordance with the individual plan of care and the approved waiver service definitions.
- (4) Notification. Upon approval of a PreAdmission Evaluation for Nursing Facility care for an individual residing in Tennessee, the Department shall provide the individual with the following:
 - (a) A simple explanation of the Waiver and Waiver Services;
 - (b) Notice of the opportunity to apply for enrollment in the Waiver and an explanation of the enrollment process; and
 - (c) A statement that participation in the waiver program is voluntary.
- (5) Enrollment.
 - (a) When an individual is determined to be likely to require the level of care provided by a Nursing Facility, the Administrative Lead Agency shall inform the individual or the individual's legal representative of all feasible alternatives available under the waiver and shall offer the choice of either Nursing Facility or Waiver Services.
 - (b) Enrollment in the Waiver shall be voluntary and open to all Waiver Eligibles who reside in Tennessee, but shall be restricted to the maximum number of individuals specified in the Waiver, as approved by the Centers for Medicare and Medicaid Services for the State of Tennessee. Enrollment may also be restricted if sufficient funds are not appropriated by the legislature to support full enrollment.
 - (c) To be eligible for enrollment, an individual must meet all of the following criteria:
 - 1. The individual must be Medicaid Eligible, must meet the Nursing Facility eligibility criteria specified in TennCare Rule 1200-13-1-.10, and must have a PreAdmission Evaluation approved by the Bureau of TennCare.
 - (i) The PreAdmission Evaluation shall include the physician's initial plan of care which includes, but is not limited to, diagnoses and any orders for medications, diet, activities, treatments, therapies, restorative and rehabilitative services, or other physician-ordered services needed by the Enrollee.

- (ii) The individual's physician must certify on the PreAdmission Evaluation that the individual requires Waiver Services.
 - 2. The individual's medical, functional, and social needs must be such that they can be effectively and safely met through the Waiver, as determined by the Administrative Lead Agency based on a pre-enrollment screening.
 - 3. An individual shall have one or more caretakers, as specified in (5)(a), designated to provide caretaker services each day in the Enrollee's home and, as needed, in other locations to ensure the health, safety, and welfare of the Enrollee. An individual shall have 24-hour caretaker services unless it is determined by an assessment that the needs of the individual can be met, and that the health, safety, and welfare of the individual can be assured, through the provision of daily (but less than 24-hour) caretaker services and through provision of a Personal Emergency Response System. Documentation of such assessment shall be included in an individualized Safety Plan that is developed, reviewed, and updated by the Administrative Lead Agency. If it is so determined that the health, safety, and welfare of the individual can be assured without 24-hour caretaker services, the individual shall have caretaker services provided for some portion of the day each day.
 - 4. An individual who does not have 24-hour caretaker services shall have an individualized Safety Plan that is based on an assessment of the individual's medical, functional, and social needs and capabilities and that is approved, monitored, and updated as needed, but no less frequently than annually, by the Administrative Lead Agency. The Safety Plan shall describe:
 - (i) The medical, functional, and social needs and capabilities of the individual and how such can be met without jeopardizing the health, safety, and welfare of the individual;
 - (ii) The type and schedule of caretaker services to be provided each day, specifying hours per day and days per week;
 - (iii) Other support services provided to the Enrollee;
 - (iv) Personal Emergency Response Systems (if utilized) which are designed to enable Enrollees, who meet the requirements of (2)(e), to secure help in an emergency; and
 - (v) Other services, devices, and supports that ensure the health, safety, and welfare of the Enrollee.
 - 5. All homes must provide an environment adequate to reasonably ensure the health, safety, and welfare of the Enrollee.
- (d) An individual who is capable of living alone or independently shall not be eligible for enrollment or continued enrollment in the Waiver.
 - (e) Enrollment of new Enrollees into the Waiver may be suspended when the average per capita fiscal year expenditure under the Waiver exceeds or is reasonably anticipated to exceed 100% of the average per capita expenditure that would have been made in the fiscal year if the care was provided in a Nursing Facility.
- (6) Caretaker.
 - (a) Caretaker services shall be provided by one or more adult individuals, aged 18 or older, who sign an agreement with the Administrative Lead Agency to provide the following services to the Enrollee, as well as any additional services outlined in the Individual Plan of Care and the Safety Plan, to meet the needs

of the Enrollee during the hours when Waiver Services are not being provided by the Administrative Lead Agency:

1. Assistance with grooming, bathing, feeding, and dressing;
 2. Assistance with medications that are ordinarily self-administered;
 3. Assistance with ambulation as needed;
 4. Household services essential to health care and maintenance in the home;
 5. Meal preparation; and
 6. Any other assistance necessary to support the Enrollee's activities of daily living.
- (b) One or more caretakers shall be available full time or part time each day in the Enrollee's home, as determined appropriate by the Administrative Lead Agency and as specified in the Individual Plan of Care and the Safety Plan, to provide care to the Enrollee. Enrollees who do not have a 24-hour caretaker shall have a Personal Emergency Response System or equivalent mechanism for ensuring emergency assistance and shall be mentally and physically capable of using it based on an assessment by the Administrative Lead Agency.
- (7) PreAdmission Evaluations, Transfer Forms, and PASARR Assessments.
- (a) A PreAdmission Evaluation is required when a Medicaid Eligible is admitted to the Waiver.
 - (b) A Transfer Form is required in the following circumstances:
 1. When an Enrollee having an approved unexpired PreAdmission Evaluation transfers from the Waiver to Level 1 care in a Nursing Facility.
 2. When a Waiver Eligible with an approved unexpired PreAdmission Evaluation transfers from a Nursing Facility to the Waiver.
 - (c) A Level I PASARR assessment for mental illness and mental retardation is required when an Enrollee with an approved, unexpired PreAdmission Evaluation transfers from the Waiver to a Nursing Facility. A level II PASARR evaluation is required if a history of mental illness or mental retardation is indicated by the Level I PASARR assessment, unless criteria for exception are met.
 - (d) An Administrative Lead Agency that enrolls an individual without an approved PreAdmission Evaluation or, where applicable, an approved Transfer Form does so without the assurance of reimbursement. An Administrative Lead Agency that enrolls an individual who has not been determined by the Tennessee Department of Human Services to be financially eligible to have Medicaid make reimbursement for covered services does so without the assurance of reimbursement. If an Administrative Lead Agency enrolls a Medicaid Eligible without an approved PreAdmission Evaluation, the individual must be informed by the Administrative Lead Agency that Medicaid reimbursement will not be paid until and unless the PreAdmission Evaluation is approved.
 - (e) The Administrative Lead Agency shall maintain in its files the original PreAdmission Evaluation and, where applicable, the original Transfer Form.

- (f) An updated Safety Plan for Enrollees who do not have 24-hour caretaker services shall be required as an attachment to the PreAdmission Evaluation or Transfer Form.
- (8) Individual Plan of Care.
- (a) The Individual Plan of Care shall be an individualized written plan of care that specifies the services designed to meet the medical, functional, and social needs of the Enrollee and that includes, but is not limited to, the following Enrollee information:
 - 1. Diagnoses;
 - 2. A description of Waiver Services and any other services regardless of payment source, including caretaker services, that the Enrollee requires to reside in the community as an alternative to care in a Nursing Facility, including the amount, frequency (number of days per week), and duration (specific number of hours per day rather than a range of hours) of services and the type of provider to furnish each service;
 - 3. Outcome objectives;
 - 4. Any treatments, therapies, activities, social services, rehabilitative services, nursing related services, home health aide services, specialized equipment, medications (including dosage, frequency, and route of administration), diet, and other services needed by the Enrollee;
 - 5. The names of each caretaker and each caretaker's schedule, including the frequency (number of days per week) and duration (hours per day) of caretaker services; and
 - 6. A Safety Plan for Enrollees who do not have 24-hour caretaker services.
 - (b) Within thirty (30) working days after enrollment, the Case Management Team shall review the Physician's Plan of Care and shall develop the Individual Plan of Care. Within five (5) working days of completion of the Individual Plan of Care, the Administrative Lead Agency shall review and approve the Individual Plan of Care.
 - (c) The Individual Plan of Care shall be periodically reviewed to ensure that the Waiver Services furnished are consistent with the nature and severity of the Enrollee's disability and to determine the appropriateness and adequacy of care and achievement of outcome objectives outlined in the Individual Plan of Care. The minimum schedule for reviews shall be as follows:
 - 1. The Individual Plan of Care shall be reviewed by a registered nurse or Social Worker Case Manager as needed, but no less frequently than every thirty (30) calendar days.
 - 2. The Individual Plan of Care shall be reviewed and signed by the Case Management Team as needed, but no less frequently than annually. The attending physician is not required to sign the Individual Plan of Care if current signed physician orders are included with the Individual Plan of Care.
 - (d) Waiver Services shall be provided in accordance with the Enrollee's Individual Plan of Care.
- (9) Physician Services.
- (a) The Enrollees's attending physician or other licensed physician shall write new orders for the Enrollee as needed, and, at a minimum, every ninety (90) calendar days.

- (b) The Administrative Lead Agency shall ensure that each Enrollee receives physician services as needed, and, at a minimum, an annual medical examination or physician visit, and shall document such in the Enrollee's record.
- (10) Reevaluation and Recertification of Need for Continued Stay.
- (a) The Administrative Lead Agency shall perform reevaluations of the Enrollee's need for continued stay in the Waiver within 365 calendar days of the date of enrollment and at least annually thereafter.
 - (b) Recertifications, documented in a format approved by the Bureau of TennCare, shall be performed by the Enrollee's physician within 365 calendar days of the initial certification date and at least annually thereafter. The Administrative Lead Agency shall maintain in its files a copy of the recertification of need for continued stay.
- (11) Voluntary Disenrollment.
- (a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's legal representative to the Administrative Lead Agency. Prior to disenrollment, the Administrative Lead Agency shall assist the Enrollee in locating alternate services to provide the appropriate level of care and shall assist in transitioning the enrollee to the new services.
 - (b) If the Enrollee's medical condition or social environment deteriorates such that the medical, functional, and social needs cannot be met by the Waiver, the Enrollee or the Enrollee's legal representative may request disenrollment from the Waiver. The Administrative Lead Agency shall assist the individual with arranging placement in a nursing facility as appropriate.
 - (c) Upon voluntary disenrollment from the Waiver, the individual shall be entitled to receive Medicaid covered services only if still eligible for Medicaid.
- (12) Involuntary Disenrollment.
- (a) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:
 1. The Statewide Home and Community Based Services Waiver for the Elderly and Disabled is terminated.
 2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.
 3. An Enrollee is no longer a resident of Tennessee or remains outside the State for a period exceeding 90 days, excluding extended out-of-state stays for college education or enrollee medical emergency.
 4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.
 5. The condition of the Enrollee deteriorates such that the medical, functional, and social needs of the Enrollee cannot be met by the Waiver.
 6. The home or home environment of the Enrollee becomes unsafe to the extent that it would reasonably be expected that Waiver Services could not be provided without significant risk of harm or injury to the Enrollee or to individuals who provide covered services to the Enrollee.
 7. The Enrollee no longer has a caretaker, as defined herein, or the caretaker is unwilling or unable to provide services needed by the Enrollee, and an alternate caretaker cannot be arranged.

8. The Enrollee or the Enrollee's caretaker refuses to abide by the Individual Plan of Care, the Physician's initial plan of care, or related Waiver policies, resulting in the inability of the Waiver to assure quality care.
 9. The health, safety, and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan or an approved Individual Plan of Care, or the continuing need for Waiver Services is not recertified by the Enrollee's physician.
- (b) If the individual is involuntarily disenrolled from the Waiver, the Administrative Lead Agency shall assist the Enrollee in locating a Nursing Facility or other alternative providing the appropriate level of care. The Administrative Lead Agency shall assist in transferring and/or transitioning the Enrollee to such facility or other alternative.
 - (c) The Administrative Lead Agency shall notify the Bureau of TennCare in writing a minimum of 2 working days prior to issuing involuntary disenrollment notice to an Enrollee.
 - (d) Waiver Services shall continue until the date of discharge of the Enrollee from the Waiver.
- (13) Reduction of Services.
- (a) If the Enrollee's condition substantially improves, the Administrative Lead Agency and the Bureau of TennCare shall have the right to reduce Waiver Services.
 - (b) Enrollees shall be provided written notice, including an explanation of the right to appeal and instructions for submitting an appeal for any reduction in Waiver Services.
 - (c) The Administrative Lead Agency must use approved notice formats or develop appropriate notice formats. If notice formats are developed, notice templates must be submitted to TennCare for review and approval prior to use.
- (14) Administration of Services. The Administrative Lead Agency shall ensure the delivery of Waiver Services to Enrollees and shall ensure that related activities including, but not limited to, the following are performed:
- (a) Pre-enrollment screening of individuals, including assessment of the individual's medical, functional, and social capabilities and needs; appropriateness for placement in the Waiver; and the ability of the caretaker to adequately care for the Enrollee in the home setting;
 - (b) Annual reevaluations of the Enrollee's need for continued stay in the Waiver;
 - (c) Enrollment of Waiver Eligibles into the Waiver after screening;
 - (d) Development, implementation, and monitoring of the Individual Plan of Care, including the Safety Plan if a Safety Plan is required;
 - (e) Coordinating and monitoring the total range of services for Enrollees, regardless of payment source;
 - (f) Initial certification by the Enrollee's physician of the Enrollee's need for care in a Nursing Facility and annual recertification of the medical necessity of the continuation of Waiver Services for the Enrollee;
 - (g) Supervision of support service staff;
 - (h) Ongoing monitoring of Enrollee and family situations and needs;

- (i) Maintenance of comprehensive medical records and documentation of services provided to Enrollees;
 - (j) Expenditure and revenue reporting in accordance with state and federal requirements;
 - (k) Any marketing activities performed for the purpose of providing information about the program to potential Enrollees;
 - (l) Assurance of quality and accessible Waiver services which are provided in accordance with State and Federal Waiver rules, regulations, policies and definitions;
 - (m) Contacts with Enrollees, caretakers, and service providers in accordance with state and federal requirements;
 - (n) Assurance that each Enrollee has appropriate caretaker services provided each day in the Enrollee's home by one or more competent adult individuals who sign an agreement with the Administrative Lead Agency;
 - (o) Assurance of the safety of the Enrollee through appropriate caretaker services, supervision, and other services and supports, as described in the Individual Plan of Care and the Safety Plan;
 - (p) Implementation of a grievance/appeals process approved by the Bureau of TennCare;
 - (q) Provision of expert testimony by appropriate professionals during contested case hearings; and
 - (r) Compliance with all applicable rules of the Tennessee Medicaid Program.
- (15) Reimbursement of Administrative Lead Agency and Subcontractors.
- (a) The average per capita fiscal year expenditure under the Waiver shall not exceed 100% of the average per capita expenditure that would have been made in the fiscal year if care was provided in a Nursing Facility. The total Medicaid expenditure for Waiver Services and other Medicaid services provided to Enrollees shall not exceed 100% of the amount that would have been incurred in the fiscal year if care was provided in a Nursing Facility.
 - (b) The provider of Waiver Services shall be reimbursed based on a rate per unit of service.
 - (c) The Administrative Lead Agency shall ensure that a diligent effort is made to collect patient liability if it applies to the Enrollee in accordance with 42 CFR § 435.726. The Administrative Lead Agency shall complete appropriate forms showing the individual's amount of monthly income and shall submit them to the Tennessee Department of Human Services. The Tennessee Department of Human Services shall issue the appropriate forms to the Administrative Lead Agency and to the Bureau of TennCare's fiscal agent, specifying the amount of patient liability to be applied toward the cost of care for the Enrollee.
 - (d) The Provider of waiver services shall submit bills for services to the Bureau of TennCare's fiscal agent using a claim form approved by the Bureau of TennCare. On the claim forms, the waiver service provider shall use a provider number assigned by the Bureau of TennCare.
 - (e) Reimbursement shall not be made to the provider of Waiver Services on behalf of Enrollees for therapeutic leave or fifteen-day hospital leave normally available to Nursing Facility patients pursuant to rule 1200-13-1-.06(4).

- (f) Medicaid covered services other than those specified in the Waiver's scope of services shall be reimbursed by the Bureau of TennCare as otherwise provided for by federal and state rules and regulations.
 - (g) The Administrative Lead Agency shall ensure that the physician's initial certification and subsequent recertifications are obtained. Failure to perform recertifications in a timely manner and in the format approved by the Bureau of TennCare shall require a corrective action plan and shall result in full or partial recoupment of all amounts paid by the Bureau of TennCare during the time that recertification has lapsed.
- (16) Subcontractors.
- (a) The Administrative Lead Agency shall ensure that:
 1. Services are provided by subcontractors who have signed contracts with the Administrative Lead Agency;
 2. Subcontractors comply with the Quality Assurance Guidelines and other state and federal standards, rules, and regulations affecting the provision of Waiver Services;
 3. Subcontractors carry appropriate professional liability insurance and other insurance (e.g., auto insurance if Enrollees are being transported); and
 - (b) Contracts between the Administrative Lead Agency and subcontractors for the provision of Waiver Services must be approved in writing by the Bureau of TennCare.
- (17) Grievance Process. The Administrative Lead Agency shall provide a grievance process for Enrollees to contest any denial, termination, suspension or reduction of Waiver Services. The grievance process is set forth in TennCare rule 1200-13-12-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits.

Authority: *T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2002. (09-45)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES ADMINISTRATION
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

There will be a public hearing before the Department of Health, Division of General Environmental Health to receive comments concerning amendments to the Bed and Breakfast Establishment Rules, pursuant to Tennessee Code Annotated, Section 68-14-503. 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 Tennessee Room, Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 9:00 A.M. on the 22nd day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of General Environmental Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division of General Environmental Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division of General Environmental Health ADA Coordinator at 6th Floor Cordell Hull Building, Nashville, Tennessee and (615) 741-7206.

For a copy of this notice of rulemaking hearing, contact: James H. Atkins, Division of General Environmental Health, 6th Floor Cordell Hull Building, Nashville, Tennessee 37247-3901, (615) 741-7206.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-23-2 BED AND BREAKFAST ESTABLISHMENTS

Rule 1200-23-2-.01, Definitions, is amended by deleting paragraph “(1) General” and renumbering the remaining subparagraphs accordingly.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-2-.01(1), General, is amended by adding a new paragraph, which reads as follows:

- (31) State Fire Marshal’s Office means the Department of Commerce and Insurance, Division of Fire Prevention.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-2-.02, Bed and Breakfast Establishments, is amended by deleting the language “(1) Sanitary Facilities and Controls” and renumbering the remaining subparagraphs accordingly.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-2-.02(1)(g), Poisonous or Toxic Materials, is amended in its entirety so that the amended subparagraph reads:

- (7) Poisonous or Toxic Materials
- (a) Materials permitted. There shall be present in bed and breakfast establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils and controlling insects and rodents.
 - (b) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.
 - (c) Storage of materials.
 - 1. Poisonous or toxic materials, used by Bed and Breakfast staff or employees, shall consist of the following categories:
 - (i) insecticides and rodenticides; or

- (ii) caustics, acids, polishes, and other chemicals, detergents, sanitizers, and related cleaning or drying agents.
 - 2. Each of the two categories set forth in paragraph 1200-23-2-.02(7)(3)1 shall be stored and physically located separate from each other.
 - 3. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose.
 - 4. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single-service articles, linens, drinking glasses, ice buckets, utensils, or other articles which come in personal contact with guests. This requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.
- (d) Use of materials.
- 1. Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
 - 2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.
- (e) Personal Care Items. Bed and Breakfast staff or employee personal care items are items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines, first-aid supplies, and other items such as cosmetics, and toiletries such as toothpaste and mouthwash. Personal care items shall be labeled and stored in a way that prevents them from contaminating food and food-contact surfaces.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-2-.02(1)(i), Fire Safety, is amended in its entirety so that the amended subparagraph reads:

- (9) Fire Safety
 - (a) Fire Extinguishers
 - 1. Portable fire extinguishers shall be provided in hazardous areas, including storage rooms, laundry, linen, and gas-fired equipment rooms.
 - 2. Fire extinguishers shall be of a type approved by the State Fire Marshal's office and installed, operated and maintained in accordance with State Fire Marshal's Office law and rules.
 - 3. No soda-acid types of extinguishers are to be used.
 - (b) Smoke Detectors and Fire Alarms

1. All sleeping rooms and sleeping areas shall be provided with a single station smoke detector. Smoke detectors shall be of a type approved by the State Fire Marshal's Office or local jurisdiction and shall be installed, operated and maintained in accordance with State Fire Marshal's Office law and rules. Single station smoke detection shall not be required when sleeping rooms contain smoke detectors connected to a central alarm system which also alarm locally.
 2. A telephone shall be provided for the immediate notification of the public fire department or private fire brigade in case of fire and to access emergency health services.
- (c) Electrical Hazards, Heating, and Flammables
1. Visible and/or obvious fire and electrical hazards are prohibited.
 2. There shall be no storage of flammables, lawnmowers, gas powered trimmers, or other similar flammable operated equipment in boiler or electrical panel rooms. Separate secured storage areas shall be provided for plainly marked flammables, explosives, and hazardous chemicals.
 3. Flammable liquids shall be stored in a well ventilated, separate building, away from guest sleeping rooms, which is constructed and rated for storage of flammables in accordance with State Fire Marshall's Office law and rules.
 4. Draperies, curtains, and other similar loosely hanging furnishings and decorations shall be flame resistant.
 5. Furnishings or decorations of an explosive or highly flammable character shall not be used.
- (d) Exits and Evacuation Plans
1. Exits shall be clear of obstructions, marked, lighted, and maintained at all times.
 2. Stairways shall be open and free of obstructions at all times.
 3. A floor diagram reflecting the actual floor arrangement, exit locations, and room identifications shall be posted in a location and in an acceptable manner on or immediately adjacent to every guest room door.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-2-.04, General Provisions, is amended in its entirety so that the amended rule reads:

- (1) Application Procedures
 - (a) A person planning to construct, operate, or change ownership of a bed and breakfast establishment shall submit a written permit application with the proper fee, as set forth in T.C.A. § 68-110-103, to the Commissioner.
 - (b) A person planning to operate a bed and breakfast establishment must submit a written application for a permit on a form provided by the Commissioner through the local county health department prior to operating a bed and breakfast establishment.

- (c) An application for a permit is required for a bed and breakfast establishment that has not previously been permitted or in instances when ownership changes.
 - (d) For the purposes of determining a change of ownership of a bed and breakfast establishment, a “person” shall include a change of ownership of the bed and breakfast establishment by a corporation (e.g., Corporation A sells its bed and breakfast establishment to Corporation B) or a change of ownership of a corporation which owns a bed and breakfast establishment. If there is no change in the federal tax identification number applicable to the corporation which owns the bed and breakfast establishment, there is no change of ownership for permit purposes.
 - (e) The Commissioner shall issue a bed and breakfast establishment permit
 - 1. upon receiving a completed application with applicable fees; and
 - 2. after an inspection of the proposed facility reveals that the facility is in compliance with requirements of these rules.
- (2) Inspection Procedures
- (a) The Commissioner shall inspect or cause to be inspected every bed and breakfast establishment at least once every six (6) months or as often as deemed necessary by the Commissioner.
 - (b) Inspection results for bed and breakfast establishments shall be recorded on standard departmental forms which summarize the requirements of the law and rules.
 - (c) The scoring system shall include a weighted point value for each requirement in which critical items are assigned values, at the discretion of the department, of either four (4) or five (5) points, with non-critical items having assigned values of either one (1) or two (2) points.
 - (d) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).
- (3) The bed and breakfast establishment shall be accessible for inspection and not be subject to flooding during the camping season.
- (4) Critical item violations shall be corrected within ten (10) calendar days from the date of the inspection. The inspection report shall state that failure to comply with any time limits for correction may result in suspension of permit or cessation of operation.
- (5) The citation of a violation of a non-critical item may be appealed, upon receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the non-critical item(s) being appealed. The final determination on the appeal shall be made by the Director or the Director’s Designee in writing and within a reasonable time after receipt of the request for an appeal.
- (6) The citation of a violation of a critical item may also be appealed upon the receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the critical item(s) being appealed. The decision of the Director shall be final and made in writing within a reasonable time of the request for an appeal.

- (7) Upon declaration of an imminent health hazard by the Commissioner, the facility shall immediately cease operations until authorized to reopen. A request for a hearing may be made in writing to the Commissioner postmarked or received within ten (10) calendar days of the decision of the Director.
- (8) The Commissioner shall suspend a bed and breakfast establishment permit, if the Commissioner has reasonable cause to believe that the permittee is not in compliance with the provisions of this part; provided, however, the permittee shall be given the opportunity to correct violations as provided in Rule 1200-23-2-.04(4). The Commissioner may provide a notice of suspension on the regular inspection report or by letter. A written request for a hearing on a suspension must be filed by the permittee within ten (10) days of receipt of notice. If a hearing is requested, it shall be held within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and is not subject to review. When a permit suspension is effective, all operations must cease. The Commissioner may end the suspension at any time, if reasons for suspension no longer exist in the opinion of the Commissioner.
- (9) Permit Revocation
 - (a) After providing an opportunity for a hearing, the Commissioner or a duly authorized representative may revoke a permit for serious or repeated violations of requirements of this part or for interference with the Commissioner in the performance of the Commissioner's duty.
 - (b) Prior to revocation, the Commissioner shall notify, in writing, the permittee of the specific reason(s) for which the permit is to be revoked. The permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the Commissioner within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.
- (10) Whenever a facility is required under this rule to cease operations by order to cease operation, or by suspension or revocation of permit, it shall not resume operations until it is shown on re-inspection that conditions responsible for the cessation of operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.
- (11) A notice provided for in this part is properly served when it is hand delivered to the permittee or person in charge, or alternatively, five (5) days from the mailing, by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the Commissioner.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-2-.05, General Provisions, is added as a new rule, which reads:

- (1) Submission of plans and specifications.
 - (a) Plans and specifications shall indicate the proposed layout arrangement, mechanical plans, construction materials, work areas, and the type and model of proposed fixed equipment and facilities.
 - (b) Regardless of which authority reviews the plans and specifications, all structures within a bed and breakfast establishment shall be designed and constructed in compliance with all applicable state and local building and fire codes.
 - (c) Pre-Operational Inspection. After specifications and plans have been approved by the Commissioner, the bed and breakfast shall not start operations until after the Commissioner has made a pre-operational inspection and has determined compliance with the approved plans and specifications and with the requirements of these rules.

(2) Severability

If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of these rules, or the application of such provision to other persons or circumstances, shall not be affected thereby.

Authority: *T.C.A. §§ 4-5-202 and 68-14-301 et seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2002. (09-41)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES ADMINISTRATION
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

There will be a public hearing before the Department of Health, Division of General Environmental Health to receive comments concerning amendments to the Tattoo Artist and Tattoo Establishment Rules, pursuant to Tennessee Code Annotated, Section 62-38-210. 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 Tennessee Room, Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 9:00 A.M. on the 22nd day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of General Environmental Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division of General Environmental Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division of General Environmental Health ADA Coordinator at 6th Floor Cordell Hull Building, Nashville, Tennessee and (615) 741-7206.

For a copy of this notice of rulemaking hearing, contact: James H. Atkins, Division of General Environmental Health, 6th Floor Cordell Hull Building, Nashville, Tennessee 37247-3901, (615) 741-7206.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-23-3
TATTOO ARTIST AND TATTOO ESTABLISHMENTS**

Rule 1200-23-3-.01(31), License, is amended in its entirety so that the amended paragraph reads:

- (31) "License" means the issuance of a license to perform tattooing to any individual. "License" further means to allow or authorize any person who has satisfactorily completed all requirements set forth by law or by the local health officer to engage in the practice or business of tattooing.

Authority: *T.C.A. §§ 4-5-202, 62-38-201 et seq., and 68-1-103.*

Rule 1200-23-3-.03, Minimum Standards for Tattoo Establishments, is amended by deleting the rule in its entirety and substituting instead the following, so that the amended rule reads:

- (1) Each studio where tattoos are administered shall provide a work area separate from observers or visitors. Walls or curtains may separate work areas, such that privacy is provided during a tattoo procedure. This is not to preclude observers, guests or visitors invited by the patron from attending the tattoo procedure.
- (2) A work area shall have a conveniently located sink equipped with hot and cold running water for handwashing and cleaning instruments. This sink shall be in addition to a bathroom sink. "Conveniently located" shall be at the discretion of the local health officer.
- (3) Each tattoo establishment shall be equipped with an autoclave or steam sterilizer, a sterilizing device capable of meeting sterilization as defined in 1200—23—3—.01(55). The autoclave shall be used to sterilize all nondisposable or reusable tattooing equipment.
- (4) Each location shall have the facilities to properly dispose of all waste material. All materials (e.g., needles) must be disposed of in accordance with the Code of Federal Regulations, Title 29, Part 1910, Occupational Safety and Health Act, Bloodborne Pathogens and/or accepted universal precaution guidelines.
- (5) The use of common towels is prohibited. Handsinks shall be equipped with a soap dispenser and single use towels.
- (6) Water Supply.
 - (a) Enough potable water for the needs of the tattoo studio shall be provided from a source constructed and operated according to law.
 - (b) Sewage. All sewage, including liquid water, shall be disposed of by a public sewerage system or by a sewerage disposal system constructed and operated according to law.
 - (c) Plumbing. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any other water supply or other source of contamination.
- (7) Toilet Facilities.
 - (a) Toilet installation. Toilet facilities shall be designed, installed, and maintained according to law. There shall be sufficient toilet rooms and/or toilet fixtures to accommodate clients and operators.
 - (b) Toilet rooms. Toilet rooms opening directly into work or customer waiting areas shall be completely enclosed and shall have tight-fitting, solid doors, which shall be closed except during cleaning or maintenance.
 - (c) Toilet fixtures. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms shall have at least one covered waste receptacle.
- (8) Lavatory Facilities.
 - (a) Lavatory installation. Lavatory facilities shall be designed, installed, and maintained according to law. Facilities shall be of sufficient number and location to permit convenient use by clients and operators.

- (b) Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet.
 - (c) Lavatory supplies. A soap dispenser and a supply of antiseptic, hand-cleaning soap or detergent shall be available at each lavatory. A supply of single use sanitary towels or a hand-drying device providing heated air shall be conveniently located near each lavatory. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.
 - (d) Lavatory maintenance. Lavatories, soap dispensers, hand-drying devices, and all related fixtures shall be kept clean and in good repair.
- (9) Solid Waste
- (a) Containers.
 - 1. Garbage and refuse shall be kept in durable, easily cleaned containers that do not leak and do not absorb liquids. Containers shall be kept in a clean and sound condition and disposed of according to law.
 - 2. Containers used in work areas shall be kept covered when not in use and after they are filled.
 - 3. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulate.
 - (b) Garbage and refuse shall be disposed of at such frequency to prevent the development of odor and the attraction of insects, rodents, or vermin.
 - (c) Disposal of infectious waste such as blood, fluids, used inks, or other liquid waste may be deposited directly into a drain connected to a sanitary sewer system. Disposable needles, scalpels, or other sharp items shall be placed intact into puncture-resistant containers with a biohazard label before disposal. Filled sharps containers shall be considered regulated waste and must be disposed of in accordance with Solid Waste Processing and Disposal Regulations (1200—1—7).
 - (d) Waste potentially contaminated with small amounts of blood or other infectious body fluids (e.g., gauze, wipes, disposable lap cloths), which do not meet the definition of regulated waste, shall be placed in sealed, impervious bags to prevent leakage of the contained items. These bags shall be of sufficient strength to prevent breakage or leakage and shall not contain any sharps. The waste bags shall be containerized and disposed of in an approved sanitary landfill.
- (10) The premises shall be kept in such condition as to prevent the entrance, harborage, or feeding of insects, rodents, or vermin.
- (11) Floors
- (a) Floor construction. Floors and floor coverings of all work areas, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth, nonabsorbent, durable material and maintained in good repair. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is allowed in work areas, dressing rooms, and locker rooms. Carpeted flooring around the operating chair and worktable in the work area must be covered by vinyl or rubber sheeting or mats so as to preclude any spillage that may occur during the tattoo operation.

- (b) Mats. Mats shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleanable.
- (12) Walls and Ceilings
- (a) Maintenance. Walls and ceilings, including doors, windows, skylight, and similar closures shall be constructed of smooth, nonabsorbent, durable material and be maintained in good repair.
 - (b) Attachments. Light fixtures, vent covers, wall-mounted fans, and similar equipment attached to walls and ceilings shall be easily cleanable and maintained in good repair.
- (13) Physical Facilities. Floors, mats, walls, ceilings, and attached equipment and decorative materials shall be kept clean.
- (14) Lighting
- (a) Permanently fixed artificial light sources shall be installed to provide at least 50 foot candles of light on all work area surfaces and at equipment washing work levels.
 - (b) Permanently fixed artificial light sources shall be installed to provide at a distance of 30 inches from the floor at least 10 foot candles of light in all other areas.
- (15) Ventilation. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes.
- (16) Living areas. No operation of a tattoo establishment shall be conducted in any room used as living or sleeping quarters.
- (17) Poisonous or Toxic Materials
- (a) Materials permitted. There shall be present in tattoo establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils and controlling insects and rodents.
 - (b) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.
 - (c) Storage of materials.
 - 1. Poisonous or toxic materials consist of the following categories:
 - (i) insecticides and rodenticides; or
 - (ii) caustics, acids, polishes, and other chemicals, detergents, sanitizers, and related cleaning or drying agents.
 - 2. Each of the two categories set forth in paragraph 1200-23-3-.03(16)(c)1 shall be stored and physically located separate from each other.
 - 3. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose.

4. To preclude contamination, poisonous or toxic materials shall not be stored above equipment, utensils or single-service articles, linens, lap cloths, utensils, or other articles which come in personal contact with patrons. This requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or handwashing stations.
- (d) Use of materials.
1. Bactericides, cleaning compounds, or other poisonous or toxic materials shall not be used in a way that leaves a toxic residue that would constitute a hazard to employees or other persons.
 2. All materials shall be used in full compliance with the manufacture's labeling.
- (18) Premises
- (a) Tattoo establishments shall be kept neat, clean, and free of litter and rubbish.
 - (b) Only articles necessary for the operation and maintenance of the tattoo establishment shall be stored on or within the establishment.
- (19) Animals. Live animals of all species shall be excluded from within the tattoo studio operational premises and from adjacent areas within the facility under the control of the permit holder. However, this exclusion does not apply to fish in aquariums. Service animals accompanying blind or deaf persons shall be permitted in the establishment.
- (20) Equipment and Utensils
- (a) Materials
 1. Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; they shall be corrosion resistant and nonabsorbent; and they shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, and safe materials.
 2. Re-use of single service articles is prohibited.
 - (b) Design and Fabrication
 1. General. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, and chipping.
 - (i) Tattooing and operational surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, as well as free of difficult-to-clean internal corners and crevices.
 - (ii) Sinks and drain boards shall be self-draining.
 2. Non-tattooing or operational surfaces. Surfaces of equipment not intended as operational surfaces, but which are exposed to splash or debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices and readily accessible for cleaning. Such surfaces shall be of material and in such repair as to be easily maintained in a clean and sanitary condition.

3. Needles, needle bars, dyes, or pigments shall be designed and manufactured for the sole purpose of tattooing.
- (21) Aisles and working spaces. Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of equipment or of operational surfaces by clothing or personal contact.
 - (22) Work Area. The work room is to be equipped or stocked in the following manner:
 - (a) a minimum of six (6) sterilized needles, six (6) needle bars, and six (6) needle tubes;
 - (b) a minimum of one extra package of disposable towels other than the package that is being used;
 - (c) a minimum of one extra box of disposable gloves other than the box being used; and
 - (d) an extra supply of bandages, ointment or gel, and antibacterial soap.

Authority: T.C.A. §§ 4-5-202, 62-38-201 et seq., and 68-1-103.

Rule 1200-23-3-.05, Establishment Permitting and Inspection System, is amended in its entirety so that the amended rule reads:

- (1) Application Procedures
 - (a) A person planning to construct, operate, or change ownership of a tattoo establishment shall submit a written permit application with the proper fee, as set forth in T.C.A. § 68-110-103, to the Commissioner.
 - (b) A person planning to operate a tattoo establishment must obtain a written application for a permit on a form provided by the Commissioner through the local county health department prior to operating a tattoo establishment.
 - (c) An application for a permit is required for a tattoo establishment that has not previously been permitted or in instances when ownership changes.
 - (d) For the purposes of determining a change of ownership of a tattoo establishment, a “person” shall include a change of ownership of the tattoo establishment by a corporation (e.g., Corporation A sells its tattoo establishment to Corporation B) or a change of ownership of a corporation which owns a tattoo establishment. If there is no change in the federal tax identification number applicable to the corporation which owns the tattoo establishment, there is no change of ownership for permit purposes.
 - (e) The Commissioner shall issue a tattoo establishment permit
 1. upon receiving a completed application with applicable fees; and
 2. after an inspection of the proposed facility reveals that the facility is in compliance with requirements of these rules.
- (2) Inspection Procedures
 - (a) The Commissioner shall inspect or cause to be inspected every tattoo establishment at least once every six (6) months or as often as deemed necessary by the Commissioner.

- (b) Inspection results for tattoo establishments shall be recorded on standard departmental forms which summarize the requirements of the law and rules.
 - (c) The scoring system shall include a weighted point value for each requirement in which critical items are assigned values, at the discretion of the department, of either four (4) or five (5) points, with non-critical items having assigned values of either one (1) or two (2) points.
 - (d) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).
- (3) The tattoo establishment shall be accessible for inspection.
 - (4) Critical item violations shall be corrected within ten (10) calendar days from the date of the inspection. The inspection report shall state that failure to comply with any time limits for correction may result in suspension of a permit or cessation of operation.
 - (5) The citation of a violation of a non-critical item may be appealed, upon receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the non-critical item(s) being appealed. The final determination on the appeal shall be made by the Director or the Director's Designee in writing and within a reasonable time after receipt of the request for an appeal.
 - (6) The citation of a violation of a critical item may also be appealed upon the receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the critical item(s) being appealed. The decision of the Director shall be final and made in writing within a reasonable time of the request for an appeal.
 - (7) Upon declaration of an imminent health hazard by the Commissioner, the facility shall immediately cease operations until authorized to reopen. A request for a hearing may be made in writing to the Commissioner postmarked or received within ten (10) calendar days of the decision of the Director.
 - (8) The Commissioner shall suspend a tattoo establishment permit, if the Commissioner has reasonable cause to believe that the permittee is not in compliance with the provisions of this part; provided, however, the permittee shall be given the opportunity to correct violations as provided in Rule 1200-1-5-.03(4). The Commissioner may provide a notice of suspension on the regular inspection report or by letter. A written request for a hearing on a suspension must be filed by the permittee within ten (10) days of receipt of notice. If a hearing is requested, it shall be held within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and not subject to review. When a permit suspension is effective, all operations must cease. The Commissioner may end the suspension at any time, if reasons for suspension no longer exist in the opinion of the Commissioner.
 - (9) Permit Revocation
 - (a) After providing an opportunity for a hearing, the Commissioner or his duly authorized representative may revoke a permit for serious or repeated violations of requirements of this part or for interference with the Commissioner in the performance of the Commissioner's duty.
 - (b) Prior to revocation, the Commissioner shall notify, in writing, the permittee of the specific reason(s) for which the permit is to be revoked. The permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the Commissioner within such

ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

- (10) Whenever a facility is required under this rule to cease operations by order to cease operation, or by suspension or revocation of permit, it shall not resume operations until it is shown on re-inspection that conditions responsible for the cessation of operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.
- (11) A notice provided for in this part is properly served when it is hand delivered to the permittee or person in charge, or alternatively, five (5) days from the mailing, by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the Commissioner.
- (12) Submission of plans and specifications.
 - (a) Plans and specifications shall indicate the proposed layout arrangement, mechanical plans, construction materials, work areas, and the type and model of proposed fixed equipment and facilities.
 - (b) Regardless of which authority reviews the plans and specifications, all structures within a tattoo studio shall be designed and constructed in compliance with all applicable state and local building and fire codes.
 - (c) Pre-Operational Inspection. After specifications and plans have been approved by the Commissioner, the tattoo studio shall not start operations until after the Commissioner has made a pre-operational inspection and has determined compliance with the approved plans and specifications and with the requirements of these rules.

Authority: *T.C.A. §§ 4-5-202, 62-38-201 et seq., and 68-1-103.*

Rule 1200-23-3-.07, License and Permit Fees, is amended in its entirety so that the amended rule reads:

- (1) As written, the law uses the terms “license” and “permit” interchangeably. For example, the law refers to the tattoo artist as being issued a license, but further refers to the tattoo artist as having to pass an examination to receive a permit. Consequently, the Department of Health has determined that individuals shall be issued licenses and that a tattoo operation shall be issued a permit.
- (2) License Fees
 - (a) Licensing fees for Tattoo Artists and Tattoo Operators shall be as provided by statute.
 - (b) A late penalty fee as provided by statute shall be assessed on all tattoo artist and tattoo operator license renewal applications which are postmarked after January 31st of each permitting year.
 - (c) A temporary artist shall pay a Temporary Artist License fee of fifty dollars (\$50.00) and shall be valid for a period not to exceed fourteen (14) calendar days.
- (3) Permit Fees
 - (a) Permit fees for Tattoo establishments shall be as provided by statute.
 - (b) A late penalty fee as provided by statute shall be assessed on all Tattoo establishment permit renewal applications which are postmarked after January 31st of each permitting year.

- (d) A temporary tattoo establishment shall be assessed a Temporary Tattoo Establishment Permit fee of fifty dollars (\$50.00) and shall be valid for a period of time not to exceed ten (10) calendar days.

Authority: *T.C.A. §§ 4-5-202, 62-38-201 et seq., and 68-1-103.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2002. (09-42)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES ADMINISTRATION
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

There will be a public hearing before the Department of Health, Division of General Environmental Health to receive comments concerning amendments to the Hotel Rules, pursuant to Tennessee Code Annotated, Section 68-14-303. 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 Tennessee Room, Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 9:00 A.M. on the 22nd day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of General Environmental Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division of General Environmental Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division of General Environmental Health ADA Coordinator at 6th Floor Cordell Hull Building, Nashville, Tennessee and (615) 741-7206.

For a copy of this notice of rulemaking hearing, contact: James H. Atkins, Division of General Environmental Health, 6th Floor Cordell Hull Building, Nashville, Tennessee 37247-3901, (615) 741-7206. Substance of Proposed Rules

SUBSTANCE OF PROPOSED RULE

**CHAPTER 1200-23-4
HOTELS**

Rule 1200-23-4-.01, Definitions, is amended by adding a new paragraph which reads:

- (20) "State Fire Marshal's Office" means the Department of Commerce and Insurance, Division of Fire Prevention.

Authority: *T.C.A. §§ 4-5-202 and 68-14-301 et seq.*

Rule 1200-23-4-.02(2), Poisonous or Toxic Materials, is amended in its entirety so that the amended paragraph reads:

- (2) Poisonous or Toxic Materials
- (a) Material permitted. There shall be present in hotels only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils and controlling insects and rodents.

- (b) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.
- (c) Storage of materials.
 - 1. Poisonous or toxic materials consist of the following categories:
 - (i) insecticides and rodenticides; or
 - (ii) caustics, acids, polishes, and other chemicals, detergents, sanitizers, and related cleaning or drying agents.
 - 2. Each of the two categories set forth in paragraph 1200-23-4-.02(2)(c)1 shall be stored and physically located separate from each other.
 - 3. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose.
 - 4. To preclude contamination, poisonous or toxic materials shall not be stored above linens, drinking glasses, ice buckets, utensils, or other articles which come in personal contact with guests. This requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.
- (d) Use of materials.
 - 1. Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
 - 2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.
- (e) Personal Care Items. Personal care items are items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines, first-aid supplies, and other items such as cosmetics, and toiletries such as toothpaste and mouthwash. Personal care items shall be labeled and stored in a way that prevents them from contaminating food and food-contact surfaces.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-4-.02(4), Fire Safety, is amended in its entirety so that the amended paragraph reads:

- (4) Fire Safety
 - (a) Fire Extinguishers
 - 1. Portable fire extinguishers shall be provided in hazardous areas, including storage rooms, laundry, linen, and gas-fired equipment rooms.

2. Fire extinguishers shall be of a type approved by the State Fire Marshal's office and installed, operated and maintained in accordance with the laws and rules applicable to the State Fire Marshal's Office.
3. No soda-acid types of extinguishers are to be used.

(b) Smoke Detectors and Fire Alarms

1. All sleeping rooms and sleeping areas shall be provided with a single station smoke detector. Smoke detectors shall be of a type approved by the State Fire Marshal's Office or local jurisdiction and shall be installed, operated and maintained in accordance with the laws and rules applicable to the State Fire Marshal's Office. Single station smoke detection shall not be required when sleeping rooms contain smoke detectors connected to a central alarm system which also alarm locally.
2. A fire alarm system of a type approved by the State Fire Marshal's Office shall be installed, operated, and maintained, in accordance with the laws and rules applicable to the State Fire Marshal's Office in hotels having more than fifteen (15) guest rooms, exceptions being hotels
 - (i) with all individual guest rooms having a direct exit to the outside; or
 - (ii) buildings three (3) stories or less with each guest room having two (2) or more directions to exit from the entrance door of the room.
3. A telephone shall be provided for the immediate notification of the public fire department or private fire brigade in case of fire and to access emergency health services.

(c) Electrical Hazards, Heating, and Flammables

1. Visible and/or obvious fire and electrical hazards are prohibited.
2. There shall be no storage of flammables, lawnmowers, gas powered weed eaters, or other similar flammable operating equipment in boiler or electrical panel rooms. Separate secured storage areas shall be provided for plainly marked flammables, explosives, and hazardous chemicals.
3. Flammable liquids shall be stored in a well ventilated, separate building, away from guest sleeping rooms, which is constructed and rated for storage of flammables in accordance with the laws and rules applicable to the State Fire Marshal's Office.
4. Draperies, curtains, and other similar loosely hanging furnishings and decorations shall be flame resistant.
5. Furnishings or decorations of an explosive or highly flammable character shall not be used.

(d) Exits and Evacuation Plans

1. Each guest room door that opens into an interior corridor shall be self-closing.
2. Exits shall be clear of obstructions, marked, lighted, and maintained at all times.
3. Stairways shall be open and free of obstructions at all times.
4. A floor diagram reflecting the actual floor arrangement, exit locations, and room identifications shall be posted in a location and in an acceptable manner on or immediately adjacent to every guest room door.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-4-.02(6), Review of Plans, is amended in its entirety so that the amended paragraph reads:

- (6) Submission of plans and specifications.
 - (a) No person shall commence construction, extensive remodeling or conversion, of a hotel or permanent structure, which is two (2) or more stories in height consisting of twelve (12) or more units until plans or specifications there of have been submitted to and approved in writing by the State Fire Marshal's Office or other authority having jurisdiction in accordance with applicable law and rules.
 - (b) No person shall commence construction, extensive remodeling or conversion, of a hotel, of any place of assembly having a capacity of three hundred (300) or more persons until plans and specifications there of have been submitted to and approved in writing by the State Fire Marshal's Office or other authority having jurisdiction in accordance with applicable law and rules.
 - (c) Except as specified in paragraphs (a) and (b), no person shall commence construction, extensive remodeling or conversion, of a hotel or permanent structure until plans and specification therefor have been submitted to and approved in writing by the Commissioner.
 - (d) Plans and specifications shall indicate the proposed layout arrangement, mechanical plans, construction materials, work areas, and the type and model of proposed fixed equipment and facilities.
 - (e) Regardless of which authority reviews the plans and specifications, all structures within a hotel shall be designed and constructed in compliance with all applicable state and local building and fire codes.
 - (f) (g) Pre-Operational Inspection. After plans and specifications have been approved by the Commissioner, the hotel shall not start operations until after the Commissioner has made a pre-operational inspection and has determined compliance with the approved plans and specifications and with the requirements of these rules.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-4-.03, Establishment Permitting and Inspection System, is amended in its entirety so that the amended rule reads:

- (1) Application Procedures
 - (a) A person planning to construct, operate, or change ownership of a hotel shall submit a written permit application with the proper fee, as set forth in T.C.A. § 68-110-103, to the Commissioner.
 - (b) A person planning to operate a hotel must submit a written application for a permit on a form provided by the Commissioner through the local county health department prior to operating a hotel.
 - (c) An application for a permit is required for a hotel that has not previously been permitted or in instances when ownership changes.
 - (d) For the purposes of determining a change of ownership of a hotel, a "person" shall include a change of ownership of the hotel by a corporation (e.g., Corporation A sells its hotel to Corporation B) or a change of ownership of a corporation which owns a hotel. If there is no change in the federal tax identification number applicable to the corporation which owns the hotel, there is no change of ownership for permit purposes.

- (e) The Commissioner shall issue a hotel permit
 - 1. upon receiving a completed application with applicable fees; and
 - 2. after an inspection of the proposed facility reveals that the facility is in compliance with requirements of these rules.
- (2) Inspection Procedures
 - (a) The Commissioner shall inspect or cause to be inspected every hotel at least once every six (6) months or as often as deemed necessary by the Commissioner.
 - (b) Inspection results for hotels shall be recorded on standard departmental forms which summarize the requirements of the law and rules.
 - (c) The scoring system shall include a weighted point value for each requirement in which critical items are assigned values, at the discretion of the department, of either four (4) or five (5) points, with non-critical items having assigned values of either one (1) or two (2) points.
 - (d) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).
- (3) The hotel shall be accessible for inspection when the commissioner deems necessary.
- (4) Critical item violations shall be corrected within ten (10) calendar days from the date of the inspection. The inspection report shall state that failure to comply with any time limits for correction may result in suspension of permit or cessation of operation.
- (5) The citation of a violation of a non-critical item may be appealed, upon receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the non-critical item(s) being appealed. The final determination on the appeal shall be made by the Director or the Director's Designee in writing and within a reasonable time after receipt of the request for an appeal.
- (6) The citation of a violation of a critical item may also be appealed upon the receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the critical item(s) being appealed. The decision of the Director shall be final and made in writing within a reasonable time of the request for an appeal.
- (7) Upon declaration of an imminent health hazard by the Commissioner, the facility shall immediately cease operations until authorized to reopen. A request for a hearing may be made in writing to the Commissioner postmarked or received within ten (10) calendar days of the decision of the Director.
- (8) The Commissioner shall suspend a hotel permit, if the Commissioner has reasonable cause to believe that the permittee is not in compliance with the provisions of this part; provided, however, the permittee shall be given the opportunity to correct violations as provided in Rule 1200-1-5-.03(4). The Commissioner may provide a notice of suspension on the regular inspection report or by letter. A written request for a hearing on a suspension must be filed by the permittee within ten (10) days of receipt of notice. If a hearing is requested, it shall be held within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the

suspension becomes final and not subject to review. When a permit suspension is effective, all operations must cease. The Commissioner may end the suspension at any time, if reasons for suspension no longer exist in the opinion of the Commissioner.

(9) Permit Revocation

- (a) After providing an opportunity for a hearing, the Commissioner or a duly authorized representative may revoke a permit for serious or repeated violations of requirements of this part or for interference with the Commissioner in the performance of the Commissioner's duty.
 - (b) Prior to revocation, the Commissioner shall notify, in writing, the permittee of the specific reason(s) for which the permit is to be revoked. The permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the Commissioner within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.
- (10) Whenever a facility is required under this rule to cease operations by order to cease operation, or by suspension or revocation of a permit, it shall not resume operations until it is shown on re-inspection that the conditions responsible for the cessation of operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.
- (11) A notice provided for in this part is properly served when it is hand delivered to the permittee or person in charge, or alternatively, five (5) days from the mailing, by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the Commissioner.

Authority: *T.C.A. §§ 4-5-202 and 68-14-301 et seq.*

Rule 1200-23-4-.04, Fees, is amended in its entirety so that the amended paragraph reads:

- (1) Fees shall be as provided by statute.

Authority: *T.C.A. §§ 4-5-202 and 68-14-301 et seq.*

1200-23-4-.07, Change of Ownership, is added as a new rule which reads:

- (1) For the purposes of determining a change of ownership of a hotel, a "person" shall include a change of ownership of the hotel by a corporation (e.g., Corporation A sells its hotel to Corporation B) or a change of ownership of a corporation which owns a hotel. If there is no change in the federal tax identification number of the corporation which originally owned the hotel, there is no change of ownership for permit purposes.

Authority: *T.C.A. §§ 4-5-202 and 68-14-301 et seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2002. (09-43)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES ADMINISTRATION
DIVISION OF GENERAL ENVIRONMENTAL HEALTH**

There will be a public hearing before the Department of Health, Division of General Environmental Health to receive comments concerning amendments to the Public Swimming Pools Rules, pursuant to Tennessee Code Annotated, Section 68-14-303. 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 Tennessee Room, Ground Floor of the Cordell Hull Building located at 425 5th Avenue North, Nashville, Tennessee at 9:00 A.M. on the 22nd day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of General Environmental Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division of General Environmental Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division of General Environmental Health ADA Coordinator at 6th Floor Cordell Hull Building, Nashville, Tennessee and (615) 741-7206.

For a copy of this notice of rulemaking hearing, contact: James H. Atkins, Division of General Environmental Health, 6th Floor Cordell Hull Building, Nashville, Tennessee 37247-3901, (615) 741-7206. Substance of Proposed Rules

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-23-5
PUBLIC SWIMMING POOLS**

Rule 1200-23-5-.01, Definitions, is amended by adding a new paragraph, which reads as follows, and renumbering the subsequent paragraphs accordingly.

- (23) "Licensed medical personnel" shall be any individual who has a current license provided by the Health Related Boards to practice that specific skill or specialty in the State. The Commissioner shall have final approval on any questionable specialties.

Authority: *T.C.A. §§ 4-5-202 and 68-14-301 et seq.*

Rule 1200-23-5-.01(38), Public swimming pool/ public pool/ or Pool, is amended in its entirety so that the amended paragraph reads:

- (39) "Public swimming pool/ Public pool/ or Pool" means any pool (other than a residential or therapeutic type pool) which is used for bathing, swimming, diving, water sliding, swimming instruction, or for other recreational purposes to which admission may be gained with or without payment of a fee.

Public swimming pools are listed in the following categories, based upon specific characteristics, usage and other factors:

- (a) Type "A" means any pool intended for, or used by, the general public for recreational use, as well as pools not open to the general public, such as institutional, school, child care facilities, scouts, resident camps, day camps, country clubs, or pools of similar usage and type.
- (b) Type "B" means swimming pools restricted to residents, members or registered guests, including pools at motels, apartments, trailer parks/mobile home parks, travel camps, condominiums, multi-family residential housing homeowner associations, and subdivisions or similar developments. Also included are YMCA, YWCA, health or athletic clubs, and pools of similar type and usage. When pools of this type are

used by other persons, organizations, special groups, or by the general public, the requirements for lifeguards shall be the same as for Type A Pools.

- (c) Type "C" means wading pools.
- (d) Type "D" means whirlpools, hot tubs, or other pools of similar type and usage, intended for health or recreational usage.
- (e) Type "E" means water flumes, water slides, or other similar water attraction.
- (f) Type "F" means leisure river, lazy river, or other similar water attraction.
- (g) Type "G" means therapeutic pools.

Rule 1200-23-5-.02(3)(d), Depth markers, is amended in its entirety so that the amended paragraph reads:

- (d) Depth markers. Depth markers shall be required at all Type A, B, and E pools. The depth of the water shall be plainly marked in feet only, on both sides and at each end, at or above the water surface on the vertical pool wall and on the coping or deck next to the pool, and at maximum and minimum depths of the pool. Depth markers shall be spaced at intervals no greater than twenty (20) feet with numerals of at least four (4) inches in height and of a color contrasting with the background. Where depth markings are required, they shall be in whole foot increments of depth, except across the shallow area and corresponding deck area, where the depth shall be marked to the nearest one half (1/2) foot increment. The metric system shall not be used as a standard of measurement, either in place of or in conjunction with the U.S. standard.ule 1200-23-5-.02(3)(r), Telephone for Emergency, is amended in its entirety so that the amended paragraph reads:

- (r) Telephone for Emergency.
 - 1. All pools shall have telephone service on the premises that can be accessed without the use of coins. A sign identifying the emergency number shall be posted next to or adjacent to the telephone. Conditions deemed acceptable include, but are not limited to, the following:
 - (i) Any conventional telephone as long as it is accessible during the entire time the pool is open and operating.
 - (ii) Coin operated telephones as long as 911 can be accessed without the use of coins.
 - (iii) Telephones located in an adjacent clubhouse as long as the clubhouse remains open and unlocked during the entire time the pool is open and operating.
 - (iv) Cellular telephones may be used to meet this requirement as long as the pool operator provides the cellular service and the cellular telephone, and the cellular telephone is present and available to the bathers during the entire time the pool is open and operating.
 - (v) Emergency telephones equipped with a push button for automatic access to 911 are acceptable provided that the telephone has a speaker or receiver for two-way communication. Alarm services without a means of vocal communication are not acceptable.

- (vi) Emergency telephones equipped with a push button for automatic access to an emergency monitoring station provided that the telephone has a speaker or receiver for two-way communication.
2. The Commissioner shall have final approval on the type and/or location of telephone services.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.02(4)(c), Sanitization, is amended by deleting part 1 in its entirety and substituting in its place the following:

1. Free available sanitizing residuals in pools for currently approved agents shall be as follows:
- (i) Type A, B, C, E, and F pools

Chlorine	0.5 - 3.0 ppm
Bromine	2.0 - 5.0 ppm
Polyhexamethyl biquanide	30 - 50 ppm
 - (ii) Type D pools

Chlorine	1.0 - 3.0 ppm
Bromine	3.0 - 5.0 ppm
Polyhexamethyl biquanide	30 - 50 ppm

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.03(2), Plans and Specifications for Review, is amended by adding a new subparagraph (f) which reads:

- (f) Failure to have pool designs approved by the Commissioner in accordance with 1200-23-5-.03(2)(a)-(e) shall subject the pool operator to a Class C Misdemeanor.

Authority: T.C.A. §§ 4-5-202, 68-14-320 and 68-14-322.

Rule 1200-23-5-.03(3), Design Standards, is amended by deleting subparagraph (a) in its entirety and substituting in its place the following:

- (a) Bathhouse facilities shall be provided within two hundred (200) feet for all Type A pools. At Type B, C, E, and F pools, bathhouse facilities shall be provided within eight hundred (800) feet of the pool. Bathroom facilities used in conjunction with living or lodging can be substituted for criteria as set forth in the following subparagraph, "Bathhouse Facilities."

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.03(3)(d), Construction Material and Finish, is amended by deleting part 3 in its entirety and substituting in its place the following:

3. All sections of a flume or slide for Type E and F pools shall be designed and constructed to prevent abrasion or injury. All surfaces shall be sealed and smooth.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.03(3)(e), Deck Areas, is amended by deleting part 1 in its entirety and substituting in its place the following:

Deck areas shall be continuous around the pool with a minimum width as follows:

1. (i) Type A: eight (8) feet;
- (ii) Type B: six (6) feet;
- (iii) Type C: four (4) feet;
- (iv) Type D: no minimum requirement; and
- (v) Type E & F: eight (8) feet around the exit of the landing pools, four (4) feet around the starting point.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.03(3)(g), Depth markers, amended in its entirety so that the amended paragraph reads:

- (g) Depth markers. Depth markers shall be required at all Type A, B, and E pools. The depth of the water shall be plainly marked in feet only, on both sides and at each end, at or above the water surface on the vertical pool wall and on the coping or deck next to the pool, and at maximum and minimum depths of the pool. Depth markers shall be spaced at intervals no greater than twenty (20) feet with numerals of at least four (4) inches in height and of a color contrasting with the background. Where depth markings are required, they shall be in whole foot increments of depth, except across the shallow area and corresponding deck area. The depth shall be marked to the nearest one half (1/2) foot increment of water depth.

Rule 1200-23-5-.03(3)(t), Lighting, is amended by deleting part 2 and substituting in its place the following:

2. Underwater lighting shall be provided at Type A and B pools. Such lighting shall be not less than 0.5 watts per square foot of pool surface area. Lights shall be positioned so that all portions of the pool are clearly visible to an observer on the pool deck.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.03(3)(hh), Signs, is amended in its entirety so that the amended subparagraph reads:

- (hh) Signs. Where no lifeguard is required at Type A, B, and C pools, a warning sign with clearly legible letters at least four (4) inches high shall be placed in plain view stating "WARNING - NO LIFEGUARD." "No Diving" sign(s) shall be displayed in conspicuous locations at all pools not meeting the minimum requirements for diving. The sign shall read "NO DIVING" clearly legible letters at least four (4) inches high.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.03(3)(ll), Turnover Rates, is amended in its entirety, so that the amended subparagraph reads:

- (ll) Turnover Rates. Pools shall be designed to filter and disinfect the water according to the following rates.
 1. All Type A and B pools shall be designed to filter and disinfect the entire volume of water in no more than six (6) hours.
 2. All Type F pools shall be designed to filter and disinfect the entire volume of water in no more than four (4) hours.

3. All Type C and E pools shall be designed to filter and disinfect the entire volume of water in no more than one (1) hour.
4. All Class D pools shall be designed to filter and disinfect the entire volume of water in no more than thirty (30) minutes.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.04, Establishment Permitting and Inspection System, is amended in its entirety so that the amended rule reads:

(1) Application Procedures

- (a) A person planning to construct, operate, or change ownership of a public pool shall submit a written permit application with the proper fee, as set forth in T.C.A. § 68-110-103, to the Commissioner.
- (b) A person planning to operate a public pool must submit a written application for a permit on a form provided by the Commissioner through the local county health department prior to operating a public pool.
- (c) An application for a permit is required for a public pool that has not previously been permitted or in instances when ownership changes.
- (d) For the purposes of determining a change of ownership of a public pool, a “person” shall include a change of ownership of the public pool by a corporation (e.g., Corporation A sells its public pool to Corporation B) or a change of ownership of a corporation which owns a public pool. If there is no change in the federal tax identification number applicable to the corporation which owns the public pool, there is no change of ownership for permit purposes.
- (e) The Commissioner shall issue a public pool permit
 1. upon receiving a completed application with applicable fees; and
 2. after an inspection of the proposed facility reveals that the facility is in compliance with requirements of these rules.

(2) Inspection Procedures

- (a) The Commissioner shall inspect or cause to be inspected every public pool at least once every month while in operation or as often as required by law.
- (b) Inspection results for public pools shall be recorded on standard departmental forms which summarize the requirements of the law and rules.
- (c) The scoring system shall include a weighted point value for each requirement in which critical items are assigned values, at the discretion of the department, of either four (4) or five (5) points, with non-critical items having assigned values of either one (1) or two (2) points.
- (d) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).

(3) The public pool shall be accessible for inspection.

- (4) Critical item violations shall be corrected within ten (10) calendar days from the date of the inspection. The inspection report shall state that failure to comply with any time limits for correction may result in suspension of permit or cessation of operation.
- (5) The citation of a violation of a non-critical item may be appealed, upon receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the non-critical item(s) being appealed. The final determination on the appeal shall be made by the Director or the Director's Designee in writing and within a reasonable time after receipt of the request for an appeal.
- (6) The citation of a violation of a critical item may also be appealed upon the receipt of a written request submitted to the Director of General Environmental Health within ten (10) calendar days following the date of the inspection report. If the tenth (10th) day falls on a weekend or state holiday, the first work day following shall be treated as the tenth (10th) day. The request for appeal shall identify the critical item(s) being appealed. The decision of the Director shall be final and made in writing within a reasonable time of the request for an appeal.
- (7) Upon declaration of an imminent health hazard by the Commissioner, the facility shall immediately cease operations until authorized to reopen. A request for a hearing may be made in writing to the Commissioner postmarked or received within ten (10) calendar days of the decision of the Director.
- (8) The Commissioner shall suspend a public pool permit, if the Commissioner has reasonable cause to believe that the permittee is not in compliance with the provisions of this part; provided, however, the permittee shall be given the opportunity to correct violations as provided in Rule 1200-1-5-.03(4). The Commissioner may provide a notice of suspension on the regular inspection report or by letter. A written request for a hearing on a suspension must be filed by the permittee within ten (10) days of receipt of notice. If a hearing is requested, it shall be held within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and not subject to review. When a permit suspension is effective, all operations must cease. The Commissioner may end the suspension at any time, if reasons for suspension no longer exist in the opinion of the Commissioner.
- (9) Permit Revocation
 - (a) After providing an opportunity for a hearing, the Commissioner or a duly authorized representative may revoke a permit for serious or repeated violations of requirements of this part or for interference with the Commissioner in the performance of the Commissioner's duty.
 - (b) Prior to revocation, the Commissioner shall notify, in writing, the permittee of the specific reason(s) for which the permit is to be revoked. The permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the Commissioner within such ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.
- (10) Whenever a facility is required under this rule to cease operations by order to cease operation, or by suspension or revocation of a permit, it shall not resume operations until it is shown on re-inspection that the conditions responsible for the cessation of operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.
- (11) A notice provided for in this part is properly served when it is hand delivered to the permittee or person in charge, or alternatively, five (5) days from the mailing, by certified mail, return receipt requested, to the last known address

of the permittee. A copy of the notice shall be filed in the records of the Commissioner.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

Rule 1200-23-5-.05, Fees, is amended by deleting paragraph (1) in its entirety and substituting in its place the following:

- (1) Except as specified in 1200-23-5-.06, Loss of Permit Document, fees shall be as provided by statute.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

1200-23-5-.07, General Provisions, is amended by adding the following new paragraphs and renumbering the existing paragraphs accordingly.

- (1) Exemptions. Any pool operator desiring to be defined as a therapeutic pool, 1200-23-5-.01(52), and not defined as a public pool, 1200-23-5-.01(38), shall be required to have a notarized letter signed by the supervising or responsible licensed medical personnel in order to obtain an exemption.
- (2) The commissioner shall maintain a copy of the notarized letters for as long as the pool is used as a therapeutic pool and/or is defined as such.

Authority: T.C.A. §§ 4-5-202 and 68-14-301 et seq.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2002. (09-44)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-63-6-101, and 63-6-224. 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 8:30 a.m. (CST) on the 6th day of January, 2003.

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

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended by deleting subparagraph (8) (a) but not its parts and substituting instead the following language, and is further amended by deleting subparagraph (8) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (a) but not its parts and the new subparagraph (8) (b) shall read:

- (8) (a) Applicants who currently hold a valid Tennessee license to practice medicine originally issued by the Board pursuant to paragraphs (5) or (6) of this rule which is in good standing must;
- (8) (b) Applicants who do not currently hold a valid Tennessee license to practice medicine must comply with all provisions of either paragraphs (5) or (6) of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-6-209, and 63-6-230.

Rule 0880-5-.04 Qualifications for Full and Limited Certification, is amended by deleting subparagraph (1) (c) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (d) in its entirety and renumbering the remaining subparagraph accordingly, so that as amended, the new subparagraph (1) (c) shall read:

- (1) (c) Skull – AP/PA and Lateral Skull Only, and Sinuses

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

Rule 0880-5-.05 Educational Course, Approval and Curriculum for Limited Certification, is amended by adding the following language as subparagraph (1) (c) and is further amended by deleting subparagraph (2) (d) and paragraph (3) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (c) and (2) (d), and the new paragraph (3) shall read:

- (1) (c) To remain approved to provide limited radiological certification training the educational course director must obtain Board approval every two (2) years by submitting the information required in subparagraph (1) (a).
- (2) (d) Specialty areas defined
 1. Chest – includes visceral thorax only; routine projections are PA, AP, Lateral, Oblique, Decubitus, and Apical Lordotic, but does not include ribs or sternum.
 2. Extremities
 - (i) Upper Extremity includes the fingers up through the humerus including the shoulder joint, clavicle, scapula and the A/C joint.
 - (ii) Lower Extremity includes the toes up through the femur including routine unilateral hip joint views, but not the pelvis.
 3. Skull/Sinus – AP/PA and Lateral Skull only, and routine Sinus projections of upright PA/Caldwell, Lateral, and Waters.

4. Lumbar Spine – AP/PA and Lateral Lumbar Spine only
- (3) Course approval may be withdrawn if the Board finds the course is in violation of any of its statutes or regulations or if the Board find the course inadequate for certification purposes based upon random auditing of the course and/or its effectiveness in producing qualified graduates. The minimum standard for continued course approval shall be based upon at least a sixty-five percent (65%) graduate pass rate for first time takers on the examinations over at least a six (6) month period.

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

Rule 0880-5-.06 Examinations for Certification, is amended by adding the following language as new paragraph (5) and renumbering the remaining paragraph accordingly:

- (5) After the fourth (4th) unsuccessful attempt at passing any section of the examination, the applicant may no longer participate in supervised limited radiography. No certificate will be issued until the exam is successfully completed and the applicant shows documentation of repeating a Board-approved course or completing an acceptable remedial program provided by a Board-approved Course Provider, and

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

Rule 0880-5-.07 Obtaining and Upgrading Full and Limited Certification, is amended by adding the following language as new subpart (1) (b) 3. (iv) and renumbering the remaining subpart accordingly, and is further amended by adding the following language as new part (1) (c) 3.:

- (1) (b) 3. (iv) A clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
- (1) (c) 3. An applicant shall submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.

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

Rule 0880-5-10 Scope of Practice, is amended by adding the following language as new paragraphs (6) and (7):

- (6) Under no circumstances may a person with limited certification perform any procedure utilizing CT (Computer-assisted Tomography) or Fluoroscopy (including C-Arm units).
- (7) Certification pursuant to these rules does not authorize the certificate holder to perform MRI (Magnetic Resonance Imaging) or Ultrasound procedures, both of which are beyond the scope and capabilities of limited licensed operators.

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

Rule 0880-5-.11 Bone Densitometry, is amended by deleting subparagraph (3) (d) in its entirety and renumbering subparagraphs (3) (e) and (3) (f) as (3) (d) and (3) (e), and is further amended by deleting renumbered subparagraph (3) (d) and part (4) (e) 4. in their entirety and substituting instead the following language, so that as amended, the new renumbered subparagraph (3) (d) and the new part (4) (e) 4. shall read:

- (3) (d) Any person who now holds a limited certification issued by the Board may receive limited certification upgrade in bone densitometry without compliance with the provisions of paragraphs (4) (b) through (d) of this rule.
- (4) (e) 4. All training must result in a Manufacturer's Statement of Training being signed by an authorized Manufacturer's representative, issued to the trainee, and sent to the Board's Administrative Office.

Authority: T.C.A. §§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 17th day of September, 2002. (09-26)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Board of Medical Examiners to consider the promulgation of new rules and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-501, 48-248-601, 48-428-602, 48-248-603, 63-6-201, 63-6-204, and 63-6-214. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 8:30 a.m. (CST) on the 6th day of January, 2003.

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) 523-4397.

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

Jerry Kosten, Regulations Manager, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

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

0880-2-.19 Medical Professional Corporations and Medical Professional Limited Liability Companies

0880-2-.19 MEDICAL PROFESSIONAL CORPORATIONS AND MEDICAL PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Medical Professional Corporations (MPC)– Except as provided in this rule Medical Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – An MPC need not file its Charter or its Annual Statement Of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in an MPC:
 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9; and/or
 2. A general partnership in which all partners are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9; and/or
 3. A MPC in which all shareholders are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 4. A Medical Professional Limited Liability Company (MPLLC) in which all members are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 5. A foreign MPC or MPLLC in which all shareholders/members are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or composed of entities which are directly or indirectly owned by such licensed physicians.
 - (c) Officers and Directors of Medical Professional Corporations –
 1. All, except the following officers, must be physicians licensed pursuant to: Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9:
 - (i) Secretary;

- (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
2. With respect to members of the Board of Directors, only physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 shall be directors of an MPC.
- (d) Corporate Practice Limitations
1. Physician incorporators, shareholders, officers, or directors of an MPC, acting individually or on behalf of, or collectively as the MPC, shall exercise only such authority as an “employing entity” may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (d)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPC.
 2. A physician shall not enter into an employment, compensation, or other contractual arrangement with an MPC that may violate the code of ethics or which gives the MPC more authority over the physician’s diagnosis, treatment and/or referral decisions than an “employing entity” may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (d)(1)(A), (B) and (C) regarding those decisions.
 3. Engaging in, or allowing another physician incorporator, shareholder, officer, or director, while acting on behalf of the MPC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b)(1) or 63-9-111 (b)(1).
 4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an MPC.
 5. Nothing in these rules shall be construed as prohibiting an MPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician incorporators, directors, officers, shareholders, employees or contractors of the MPC who are practicing medicine as defined by Tennessee Code Annotated § 63-6-204.
 6. Nothing in these rules shall be construed as prohibiting a physician from owning shares of stock in any type of professional corporation other than an MPC so long as such ownership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated § 63-6-204.
- (2) Medical Professional Limited Liability Companies (MPLLC) - Except as provided in this rule Medical Professional Limited Liability Companies shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 248.
- (a) Filings –Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement Of Qualifications need be filed with the Board.
 - (b) Membership– With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-428-401 only the following may members of an foreign or

domestic M PLLC doing business in Tennessee:

1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9; and/or
2. A general partnership in which all partners are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9; and/or
3. A MPC in which all shareholders are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
4. A Medical Professional Limited Liability Company (M PLLC) in which all members are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
5. A foreign MPC or M PLLC in which all shareholders/members are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or composed of entities which are directly or indirectly owned by such licensed physicians.

(c) Managers or Governors of an M PLLC

1. All, except the following managers, must be physicians licensed pursuant to : Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9:
 - (i) Secretary
 - (ii) Treasurer
2. Only physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 shall be serve on the Board of Governors of an M PLLC.

(d) Practice Limitations

1. Physician members, officers, or governors of an M PLLC, acting individually or on behalf of, or collectively as the M PLLC, shall exercise only such authority as an “employing entity” may exercise pursuant to T.C.A. § 63-6-204 (d)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the M PLLC.
2. A physician shall not enter into an employment, compensation, or other contractual arrangement with an M PLLC that may violate the code of ethics or which gives the M PLLC more authority over the physician’s diagnosis, treatment and/or referral decisions than an “employing entity “may exercise pursuant to T.C.A. § 63-6-204 (d)(1)(A), (B) and (C) regarding those decisions.
3. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an M PLLC.
4. Nothing in these rules shall be construed as prohibiting an M PLLC from electing to form for the

purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician members, governors, officers, employees or contractors of the MPC who are practicing medicine as defined by Tennessee Code Annotated § 63-204.

5. Nothing in these rules shall be construed as prohibiting a physician from being members of any type of professional limited liability company other than an M PLLC so long as such membership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 6. All M PLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that it is not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that an MPC or a M PLLC has violated or is violating any provision of Title 48 Chapters 101 and/or 248 shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Section, 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the MPC and/or M PLLC or the secretary of state if one of the events described in Tennessee Code Annotated, Section 48-208-104 or a violation of the provisions of Tennessee Code Annotated, Title 48, Chapter 248 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the MPC and/or M PLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the MPC and/or M PLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48, Chapter, Part 9
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provision of the Uniform Administrative Procedures Act, compiled in Title 4, chapter 5 but that the MPC and/or M PLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the it is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that an MPC and/or M PLLC did violate any provision of title 48, chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)-(3) and/or 248-409 (1)-(3).
- (4) Violation of this rule by any physician individually or collectively while acting as an MPC or as an M PLLC may subject the physician(s) to disciplinary action pursuant to Tennessee Code Annotated, Sections 63-6-214 (b), or 63-9-111 (b).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-501, 48-248-601, 48-428-602, 48-248-603, 63-6-201, 63-6-204, and 63-6-214.

REPEALS

0880-8-1-.01	Purpose - is repealed.
0880-8-1-.02	Definitions - is repealed.
0880-8-1-.03	Coverage and Scope of Act - is repealed.
0880-8-1-.04	Ownership of M.P.C. Shares - is repealed.
0880-8-1-.05	Requirements as to Form of Corporate Charter - is repealed.
0880-8-1-.06	Filing of Charter - is repealed.
0880-8-1-.07	Corporate Practice Limitations - is repealed.
0880-8-1-.08	Practice Beyond Scope of Charter - is repealed.
0880-8-1-.09	Prohibition on Physician Combining with Other Professions - is repealed.
0880-8-1-.10	Ethical Prohibition on Physicians' Ownership of a Non-M.P.C. - is repealed.
0880-8-1-.11	Corporate Name - is repealed.
0880-8-1-.12	Officers and Directors - is repealed.
0880-8-1-.13	Requirements as to Form of Stock Certificate - is repealed.
0880-8-1-.14	Offering of M.P.C. Shares Prohibited - is repealed.
0880-8-1-.15	Regulation of M.P.C. Shares by the Board - is repealed.
0880-8-1-.16	Filing of Annual Statement of Qualifications - is repealed.
0880-8-1-.17	Termination of M.P.C. Status - is repealed.
0880-8-2-.01	Purpose - is repealed.
0880-8-2-.02	Definitions - is repealed.
0880-8-2-.03	Coverage and Scope of Rules - is repealed.
0880-8-2-.04	Membership in M PLLC'S - is repealed.
0880-8-2-.05	Persons Permitted to be Managers or Governors - is repealed.
0880-8-2-.06	Dissolution - is repealed.
0880-8-2-.07	Foreign M PLLC'S - is repealed.
0880-8-2-.08	Delivery of Articles - is repealed.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the September 17, 2002. (09-25)

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 18th day of November, 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-.04, License Renewal, is amended by adding the following language as new part (7) (b) 5.:

- (7) (b) 5. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the reinstatement fee, past due renewal fees, and state regulatory fees as provided in Rule 1045—2—.01; and

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-8-112, and 63-8-119.

Rule 1045-2-.05, Continuing Education, is amended by deleting paragraph (1) but not its parts, and is further amended by deleting subparagraph (1) (a), part (2) (c) 2., part (2) (d) 2., subpart (2) (d) 3. (ii), and subpart (2) (d) 3. (iii) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) but not its parts, and the new subparagraph (1) (a), part (2) (c) 2., part (2) (d) 2., subpart (2) (d) 3. (ii), and subpart (2) (d) 3. (iii). shall read:

- (1) As a prerequisite to maintaining licensure, an Optometrist must complete thirty (30) hours of Board approved continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.
- (1) (a) For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in diagnosis, treatment, and/or use of pharmaceutical agents in the practice of optometry.
- (2) (c) 2. practice management; the total number of practice management hours that will be accepted is six (6) hours of the thirty (30) hour requirement annually.
- (2) (d) 2. Twelve (12) hours of the thirty (30) hour requirement may be completed in any of the following multi-media formats:

- (i) The Internet
 - (ii) Closed circuit television
 - (iii) Satellite broadcasts
 - (iv) Correspondence courses
 - (v) Videotapes
 - (vi) CD-ROM
 - (vii) DVD
 - (viii) Teleconferencing
 - (ix) Videoconferencing
 - (x) Distance learning
- (2) (d) 3. (ii) A maximum of six (6) hours may be granted for grand rounds and;
- (2) (d) 3. (iii) The grand rounds must be submitted to the Board for prior approval.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2002. (09-38)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 02-10 ESTABLISHING LOVELL FIELD WMA

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-1-302 and 70-5-101 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following area to be known as Lovell Field Wildlife Management Area.

Those lands and waters along South Chickamauga Creek in southwest Hamilton County owned by the City of Chattanooga and the Chattanooga Metropolitan Airport Authority in the vicinity of Lovell Field. A more complete description may be found on file in the Registrar's office in Hamilton County, Tennessee.

Proclamation No. 02-10 received and recorded this 6th day of September, 2002. (09-02)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 02-14 ESTABLISHING CUMBERLAND FOREST WMA

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-1-302 and 70-5-101 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following area to be known as Cumberland Forest Wildlife Management Area.

Those lands and waters located in Anderson, Campbell, and Scott Counties owned by The Conservation Fund. A more complete description may be found on file in the Real Estate Division office of Tennessee Wildlife Resources Agency, Nashville, Tennessee.

This proclamation repeals proclamation 96-14 dated July 25, 1996.

Proclamation No. 02-14 received and recorded this 26th day of september, 2002. (09-39)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

**PROCLAMATION 02-15
MIGRATORY BIRD HUNTING REGULATIONS
2002-2003 SEASON**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-4-107 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following migratory bird hunting regulations effective October 1, 2002: Season dates and limits pending final Federal Frameworks.

SECTION I. HUNTING SEASONS

Species	Season Opens	Season Closes
A. Ducks, Coots, and Mergansers		
Reelfoot Duck Zone	Nov. 9	Nov. 10
Pintail	Dec. 28	Jan. 26
Canvasback	Closed	Closed
Reelfoot Duck Zone shall include the waters of Reelfoot Lake.		
Remainder of State	Nov. 23 Nov. 30	Nov. 24 Jan. 26
Pintail	Dec. 28	Jan. 26
Canvasback	Closed	Closed

B. Youth Waterfowl Hunting Season
2-Days Only

Reelfoot Duck Zone	Feb. 1	Feb. 2
Remainder of State	Feb. 1	Feb. 2

Youth waterfowl hunters must be 15 years of age or younger. An adult at least 18 years of age must accompany the youth hunter into the field. This adult cannot duck hunt but may participate in other open seasons. Geese, coots, gallinules, moorhens, and ducks, including pintails, may be taken by youths during Youth Waterfowl Season, but canvasback season is closed during Youth Waterfowl Season.

C. Purple Gallinules and
Common Moorhens
Reelfoot Duck Zone

Nov. 9	Nov. 10
Nov. 30	Jan. 19

SECTION I. HUNTING SEASONS, CONT.

	Species	Season Opens	Season Closes
	Remainder of State	Nov. 23 Nov. 30	Nov. 24 Jan. 19
D.	Virginia Rails and Sora Rails Reelfoot Duck Zone	Nov. 9 Nov. 30	Nov. 10 Jan. 20
	Remainder of State	Nov. 23 Nov. 30	Nov. 24 Jan. 20
E.	White-fronted Geese	Nov. 22	Feb. 15
F.	Blue, Snow, and Ross' Geese	Nov. 16	Mar. 2
G.	Brant	Dec. 2	Jan. 31
H.	Canada Geese	Dec. 7	Feb. 15
	1. Northwest MVP Zone: Mississippi Valley Population Lake, Obion, and Weakley Counties, and Those Portions of Gibson and Dyer Counties Not Included in the Southwest MVP Zone.		
	2. Southwest MVP Zone: Mississippi Valley Population That portion of the state bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.	Dec. 13	Jan. 31
	3. Kentucky/Barkley Lake Zone: Southern James Bay Population That area west of Highway 13 not in the Northwest and Southwest MVP Zones.	Dec. 13	Jan. 31
	4. Remainder of the State:	Oct. 5 Nov. 30	Oct. 16 Jan. 26

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

SECTION II. SHOOTING HOURS

From ½ hour before sunrise to sunset daily, for all species and seasons

SECTION III. BAG AND POSSESSION LIMITS**A. Ducks and Mergansers**

Daily Bag Limit:

The Daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be a female), 1 black duck, 2 wood ducks, 1 pintail (last 30 days of season), 3 scaup, and 2 redheads. The daily bag limit of merganser is 5, only 1 of which may be a hooded merganser.

Possession Limit:

The maximum number of birds which could have legally been taken in two (2) days.

		Daily Bag	Possession
B.	Coots and Gallinules	15	30
C.	Virginia and Sora Rails	25	25
D.	Blue and Snow Geese	20	No Limit
E.	White-fronted Goose	2	4
F.	Brant 2 4		
G.	Canada Goose	2	4

SECTION IV. REPEAL OF PRIOR PROCLAMATION

This proclamation repeals Proclamations No. 01-16, dated August 22, 2001.

Proclamation No. 02-15, received and recorded this 6th day of September, 2002. (09-02)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

**PROCLAMATION 02-16
AMENDING PROCLAMATION 02-8
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 02-8, Wildlife Management Areas, Hunting Seasons, Limits and Miscellaneous Regulations:

Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, by adding the following wording between the existing listings for Lick Creek Bottoms and Maness Swamp Refuge:

Lovell Field (No dog training allowed)

Deer (Archery Only)

Six 3-day hunts. Sept. 27-29, Oct. 11-13, Oct. 25-27, Nov. 15-17, Nov. 29-Dec.1 and Dec. 13-15. Hunter quota 10 each hunt. Bag limit one deer. No area checking station operated. Sign up for drawing will be held at Greenway Farms between noon and 2 p.m. on Sept. 14. Hunters must be present at sign up and drawing.

Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, by adding the following wording between the existing listings for Cordell Hull Refuge and Cumberland Springs:

Cumberland Forest

Grouse, Opossum, Rabbit, Raccoon,
Snipe, Squirrel, Waterfowl, Woodcock

Same as statewide except hunting season closed March 1 to August 23, except for turkey hunts and spring squirrel season.

Deer

Same as statewide seasons.

Dog Training

Sept. 1 – Mar. 1.

This proclamation repeals proclamation 98-19, dated July 16, 1998.

Proclamation No. 02-16 received and recorded this 26th day of September, 2002. (09-40)

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CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning September 3, 2002 and ending September 30, 2002.

Riley C. Darnell

RILEY C. DARNELL
Secretary of State

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