

# TAAAR



**December 13, 2002**  
**Volume 28, Number 12**

**RILEY C. DARNELL**

Secretary of State

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

## **DEPARTMENT OF STATE NONDISCRIMINATION POLICY STATEMENT**

Pursuant to its policy of nondiscrimination, the Department of State does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in, its programs, services, or activities.

Equal Employment Opportunity/Affirmative Action inquiries or complaints should be directed to the Department of State, Bard G. Fisher, EEO/AA Coordinator, 7th Floor, Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN, 37243-0311 or call (615) 741-7411, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. ADA inquiries or complaints should be directed to Mr. Fisher at the above mentioned location.

## **PUBLIC INSPECTION OF DOCUMENTS**

A certified copy of each document filed with the Department of State, Division of Publications is available for public inspection from 8 A.M. to 4:30 P.M., Monday through Friday. Copies of documents may be made at a cost of 25 cents per page and \$2 for the certification page, payable in advance if requested. The Division of Publications is located on the Eighth Floor, Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243 - 0310. Telephone inquiries may be made by calling (615) 741-0522, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. Individuals with disabilities who wish to inspect these filings should contact the Division of Publications to discuss any auxiliary aids or services needed to facilitate such inspection. Such contact may be made in person, by writing, telephonically or otherwise and should be made at least ten (10) days in advance of the date such party intends to make such inspection to allow time for the Division of Publications to provide such aid or service.

Department of State, Authorization No. 305197, 375 copies, December 2002. This public document was promulgated at a cost of \$ 3.62 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.

**Reproduction** - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

Blank

pg. iv

**TABLE OF CONTENTS**

**ANNOUNCEMENTS**

Children's Services, Department of  
    Notice of Withdrawal of Rules ..... 1

Financial Institutions, Department of  
    Announcement of Formula Rate of Interest ..... 1  
    Announcement of Maximum Effective Rate of Interest ..... 1

Government Operations Committees  
    Announcement of Public Hearings ..... 2

Health Services and Development Agency  
    Notice of Beginning of Review Cycle ..... 6

Medical Examiners, Board of  
    Notice of Withdrawal of Rules ..... 10

TN Regulatory Authority  
    Correction ..... 10

**EMERGENCY RULES**

Emergency Rules Now in Effect ..... 11

**PROPOSED RULES**

Labor and Workforce Development, Department of ..... 15

**PUBLIC NECESSITY RULES**

Public Necessity Rules Now in Effect ..... 21

**RULEMAKING HEARINGS**

Commerce and Insurance, Department of ..... 17

Dentistry, Board of ..... 28

Environment and Conservation, Department of ..... 31

Finance and Administration, Department of ..... 51

Medical Examiners, Board of ..... 53

Osteopathic Examination, Board of ..... 70

Psychology, Board of ..... 78

Social Worker Certification and Licensure, Board of ..... 79

Wildlife Resources Commission ..... 80

**WILDLIFE PROCLAMATIONS**

02-17 Regulating Spring Wild Turkey Hunting Seasons and Bag Limits ..... 85

**CERTIFICATION** ..... 91

**CHANGE OF ADDRESS FORM** ..... 93

**ORDER FORM** ..... 95

Blank

pg. vi

## **ANNOUNCEMENTS**

### **THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES - 0260 CHILD PROTECTIVE SERVICES**

#### **NOTICE OF WITHDRAWAL OF RULES**

The Tennessee Department of Children's Services hereby gives notice of the withdrawal of Chapter 0250-7-9 Due Process Procedures for Release of Child Abuse/Neglect Records filed with the Department of State on the 26<sup>th</sup> day of September, 2002, and to have become effective on the 10<sup>th</sup> day of December 2002.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 26th day of November, 2002. (11-22)

### **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 8.25 per cent.

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

### **DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**

#### **ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST**

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of January 2003 is 9.16 per cent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the published rate is 5.16 per cent.

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

## **GOVERNMENT OPERATIONS COMMITTEES**

### **ANNOUNCEMENT OF PUBLIC HEARINGS**

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of November 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. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-01	Nov 1, 2002	<b>0880 Medical Examiners</b>	Rulemaking Hearing Rules	Amendment	<i>Chapter 0880-5 General Rules and Regulations Governing the Utilization of X-Ray Operators in Physician's Offices</i> 0880-5-.11 Bone Densitometry	Robert J. Kraemer, Jr. OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Jan 15, 2003
11-02	Nov 4, 2002	<b>1365 Social Worker Certification and Licensure</b>	Rulemaking Hearing Rules	Amendments	<i>Chapter 1365-1 General Rules and Regulations</i> 1365-1-.04 Qualifications for Certification and Licensure 1365-1-.05 Procedures for Certification and Licensure 1365-1-.06 Fees 1365-1-.10 Supervision	Carrie Archie OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Jan 18, 2003
11-04	Nov 5, 2002	<b>0250 Children's Services</b> Social Services Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 0250-7-14 Relative Caregiver Program</i> 0250-7-14-.01 Purpose of Chapter 0250-7-14-.02 Definitions for Purposes of This Chapter 0250-7-14-.03 Procedures for The Relative Caregiver Program	Stacy Miller, Esq. DCS Central Legal Office TN Towers 312 8 <sup>th</sup> Ave N., 25 <sup>th</sup> Fl Nashville TN 37243 (615) 253-2161	Jan 19, 2003
11-06	Nov 6, 2002	<b>0880 Medical Examiners</b>	Notice of Withdrawal of Rules		subparagraph (c) of rule 0880-2-.14 (10) Filed Oct 4, 2002; effective Dec 18, 2002		
11-07	Nov 15, 2002	<b>1200 Health</b> Bureau of Health Licensure and Regulation Emergency Medical Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-12-1 General Rules</i> 1200-12-1-.20 Training for Emergency Medical Services for Children	Earl W. Roberts OGC 26 <sup>th</sup> Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-532-7181	Jan 29, 2003
11-13	Nov 22, 2002	<b>1240 Human Services</b> Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-1 Standards for Group Day Care Homes</i> 1240-4-1-.02 Ownership and Administration 1240-4-1-.07 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	Feb 4, 2003

SEQ	FILE DATE	DEPT. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-14	Nov 21, 2002	<b>1240 Human Services</b> Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children</i> 1240-4-3-.06 Organization and Administration 1240-4-3-.10 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	Feb 4, 2003
11-15	Nov 21, 2002	<b>1240 Human Services</b> Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-4 Standards for Family Day Care Homes</i> 1240-4-4-.02 Ownership and Administration 1240-4-4-.07 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	Feb 4, 2003
11-16	Nov 21, 2002	<b>1240 Human Services</b> Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children</i> 1240-4-4-.02 Organization and Administration 1240-4-4-.07 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville, TN 37248-0006 (615) 313-4731	Feb 4, 2003
11-20	Nov 25, 2002	<b>0800 Labor and Workforce Development</b> Occupational Safety and Health	Proposed Rules	Amendment	<i>Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry</i> 0800-1-1-.06 Adoption and Citation of Federal Standards <i>Chapter 0800-1-6 Occupational Safety and Health 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	Michael M. Maenza Labor and Workforce Development Occupational Safety and Health 3rd Fl Andrew Johnson Twr 710 James Robertson Pkw Nashville, TN 37243-0659 (615) 741-7036	Mar 28, 2003
11-21	Nov 25	<b>0780 Commerce and</b>	Rulemaking	Amendments	<i>Chapter 0780-2-17 Liquefied Petroleum Gas Safety Regulations</i>	M. Connaught O'Connor TN Tower	Feb 8, 2003

SEQ	FILE DATE	DEPT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-21, cont.	2002	<b>Insurance</b> Division of Fire Prevention	Hearing Rules		0780-2-17-.02 Adoption by Reference	25th Fl 312 8th Ave N Nashville, TN 37243 615-741-3072	
11-22	Nov 26, 2002	<b>0250 Children's Services</b> Child Protective Services	Notice of Withdrawal of Rules		<i>Chapter 0250-7-9 Due Process Procedures for Release of Child Abuse/Neglect Records</i> (Filed Sept 26, 2002; effective Dec 10, 2002)	Sherry Abernathy Children's Services 8th Fl Cordell Hull Bldg 436 6th Ave N Nashville TN 37243-1290	Jan 16, 2003
11-24	Nov 26, 2003	<b>0400</b> Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 06-509	Robert L. Powell Division of Superfund 4th Floor Annex, L & C Building Nashville, TN 37243-1538 (615)532-0916	Feb 9, 2003
11-25	Nov 26, 2003	<b>0400</b> Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 57-513	Robert L. Powell Division of Superfund 4th Floor Annex, L & C Building Nashville, TN 37243-1538 (615)532-0916	Feb 9, 2003

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

Applications will be heard at the January 22, 2003 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 November 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 Developmental Disabilities. 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 Developmental Disabilities. 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**

Baptist Memorial Hospital – Collierville  
1500 West Poplar Avenue  
Collierville (Shelby Co.), TN 38017  
Arthur Maples – (901)—227-4137  
CN0208-080

The establishment of an outpatient diagnostic center to be located on the hospital campus at the corner of Poplar Avenue and Shea Road in Collierville, Tennessee. Major medical equipment includes a new CT LightSpeed scanner at an estimated cost of approximately 1.5 million dollars. Other diagnostic services include mammography, ultrasound, general radiology and laboratory services. This facility will be operated as an outpatient service of the hospital.

\$ 6,295,000.00

Life Care Center of Sparta  
508 Mose Drive  
Sparta (White Co.), TN 38583  
Rick Stern – (423)—238-7393  
CN0209-082

The addition of twenty (20) dually certified (Medicare and Medicaid) nursing home beds to an existing one hundred (100) bed nursing home at 508 Mose Drive in Sparta, Tennessee. Current bed complement: 57 Medicaid-only and 43 Medicare/Medicaid of a total of 100 beds. Proposed bed complement: 57 Medicaid-only and 63 Medicare/Medicaid for a total of 120 beds. NOTE: These beds will be considered under the 02/03 125-bed pool.

\$ 720,947.00

NAME AND ADDRESS	DESCRIPTION
<p>Copper Basin Community Hospital, Inc. D/b/a Copper Basin Medical Center 144 Medical Center Drive, P.O. Box 990 Copperhill (Polk Co.), TN 37317 Brandon Jolley – (423)—595-5511 CN0209-086</p>	<p>The conversion of eight (8) general acute care beds to swing beds and initiation of mobile magnetic resonance imaging (MRI) services one (1) day per week at Copper Basin Community Hospital, Inc. d/b/a Copper Basin Medical Center at 144 Medical Center Drive in Copperhill, Tennessee. The hospital's licensed bed complement will remain at 40 beds. NOTE: Although licensed as hospital beds swing beds are considered under the 02/03 125-bed pool (TCA 68-11-1622). \$ 209,000.00</p>
<p>Odyssey HealthCare of Memphis 1845 Moriah Woods Boulevard, #1 Memphis (Shelby Co.), TN 38117 John Wellborn – (615)—665-2022 CN0209-090</p>	<p>The establishment of a home care organization and the initiation of hospice services in the counties of Shelby, Tipton, and Fayette. The parent office will be located at 1845 Moriah Woods Boulevard, #1 in Memphis (Shelby County), Tennessee. \$ 158,400.00</p>
<p>DeKalb County Outpatient Surgery Center, P.L.L.C. 304 North Congress Boulevard Smithville (DeKalb Co.), TN 37166 Sarah J. Cripps – (615)—597-2989 CN0210-096</p>	<p>The establishment of an ambulatory surgical treatment center (ASTC) with one (1) operating room and one (1) procedure room to be located at 304 North Congress Boulevard in Smithville, Tennessee. \$ 1,539,260.00</p>
<p>DRD Knoxville Medical Clinic Central 412 Citico Street Knoxville (Knox Co.), TN 37921 Janet Hasler – (816)—357-2461 CN0210-097</p>	<p>The establishment of a non-residential methadone treatment facility and the initiation of methadone treatment at 412 Citico Street in Knoxville, Tennessee. This facility is in addition to the current DRD Knoxville Medical Clinic facility located on Bernard Avenue. Services will include adult non-residential alcohol and drug abuse treatment; non-residential methadone treatment, employer drug screening and counseling. \$ 1,093,276.00</p>
<p>HMA Fentress County General Hospital d/b/a Jamestown Regional Medical Center 436 Central Avenue West Jamestown (Fentress Co.), TN 38556 Bern Phillip – (931)—879-3352 CN0210-098</p>	<p>The renovation and expansion of the Emergency Department and Surgical Department of the hospital located at 436 Central Avenue West in Jamestown, Tennessee. The project will consist of 23,260 square feet. The construction includes 3 major OR suites, one of which will accommodate all orthopedic procedures. The ER includes 8 exam rooms, two of which will be equipped for cardiac treatment and trauma care. \$ 8,029,641.00</p>

NAME AND ADDRESS	DESCRIPTION
Cumberland River Hospital 100 Jefferson Street Celina (Clay Co.), TN 38551 Alan Sharp – (931)—243-5290CN0210-099	The addition of six (6) general hospital beds to be utilized as swing beds and to be considered under the 2002/03 125 nursing home bed pool. This will increase the hospital's designated swing bed complement from two (2) beds to eighty (8) beds. The hospital's existing six (6) skilled nursing home beds will be delicensed. Current bed complement: 20 medical, 8 geriatric psychiatric and 2 swing for a total of 30 general hospital beds and 6 nursing home beds. Proposed bed complement: 20 medical, 8 geriatric psychiatric and 8 swing for a total of 36 general hospital beds and 0 skilled nursing home beds.NOTE: Although swing beds are licensed as hospital beds, swing beds are considered under the 02/03 125 nursing home bed pool (TCA68-11-1622). \$ 5,000.00
Hardin County General Hospital 2006 Wayne Road Savannah (Hardin Co.), TN 38372 Charlotte Burns – (731)—926-8121 CN0210-101	Construction and renovation project totaling 34,570 square feet, which includes 20,029 new square feet and 14,451 renovated square feet. New construction includes emergency room, radiology, lab, outpatient area, respiratory therapy, lobby, gift shop, admissions, PBX operator, patient waiting, canopies, and dining area. Renovated space includes OB, clinic, chemo, administration, boardroom, and human resources. This project also includes the acquisition of a MRI scanner and the initiation of MRI services. A mobile MRI unit will be utilized until the fixed unit can be placed in the newly constructed radiology department at Hardin County General Hospital, 2006 Wayne Road in Savannah, Tennessee. \$ 9,440,000.00
Baptist Hospital of East Tennessee, Inc. 137 Blount Avenue Knoxville, (Knox Co.), TN 37920 John B. Sylvia – (865)—632-5166 CN0210-102	The initiation of mobile Positron Emission Tomography (PET) services one day per week on the campus of Baptist Hospital of East Tennessee at 137 Blount Avenue in Knoxville, Tennessee. \$ 642,489.00
Maury Regional Hospital 224 Trotwood Avenue Columbia (Maury Co.), TN 38401 William R. Walter – (931)—380-4001 CN0210-103	The initiation of mobile Positron Emission Tomography (PET) services one day per week at the hospital campus on 1224 Trotwood Avenue in Columbia, Tennessee. \$ 480,000.00

## NAME AND ADDRESS

## DESCRIPTION

Horizon Medical Center  
 111 Highway 70 East  
 Dickson (Dickson Co.), TN 37055  
 John Wellborn – (615)—665-2022  
 CN0210-104

The addition of seven (7) acute care hospital beds and the initiation of rehabilitation services. The inpatient rehabilitation unit will consist of twelve (12) beds, seven (7) new beds and five (5) existing acute care hospital beds, that are currently Medicare certified for geropsychiatric use. The geropsychiatric unit will decrease from a 12-bed unit to a 7-bed unit. The proposed rehabilitation unit will be located in the space currently occupied by the current twenty-six (26) bed skilled nursing home unit, which will be delicensed. Current bed complement: 138 general acute and 12 geropsychiatric for a total of 150 hospital beds and 26 skilled nursing home beds. Proposed bed complement: 138 general acute, 7 geriatric psychiatric and 12 rehabilitation for a total of 157 hospital beds and 0 skilled nursing home beds.

\$ 180,000.00

Select Specialty Hospital – Knoxville, Inc.  
 1924 Alcoa Highway  
 Knoxville (Knox Co.), TN 37920  
 Graham Baker – (615)—383-3332  
 CN0210-105

The establishment of a 25-Bed Long Term Care Hospital to be located in leased space currently occupied by a twenty-six (26) bed skilled nursing unit at University of Tennessee Medical Center in Knoxville, Tennessee. If approved, University of Tennessee Medical Center will discontinue its skilled nursing unit. The facility will be licensed separately but will be Medicare certified as a satellite of the existing Select Specialty Hospital located at 1901 Clinch Avenue.

\$ 2,462,500.00

**BOARD OF MEDICAL EXAMINERS - 0880****NOTICE OF WITHDRAWAL OF RULES**

The Board of Medical Examiners, hereby gives notice of withdrawal of subparagraph (c) of rule 0880-2-.14 (10) filed with the Department of State on the 4th day of October, 2002 to have become effective on the 18th day of December, 2002.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 6th day of November, 2002. (11-06)

**TN REGULATORY AUTHORITY - 1220****CORRECTION**

The announcement section of the table of contents in the November 2002 T.A.R. listed in error, a stay of effective date for the TN Regulatory Authority. There was no stay filed for the TN Regulatory Authority during the month of October.

## **EMERGENCY RULES**

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

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency Rules regarding persons licensed as pesticide applicators and creating a new license category, Chapter 0080-6-14 Pest Control Operators and chapter 0080-6-16 Regulations Governing the Use of Restricted Use Pesticides, 10 T.A.R. (October, 2002). Filed September 16, 2002; effective through February 28, 2003. (09-24)
- 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)
- 1200 - Department of Health - Health and Licensure regulation - Emergency and Medical Services Division - Emergency rules covering procedures for administering chemical agent antidotes or epinephrine in emergency situations, chapter 1200-12-1 Procedures for Administering Chemical Agent Antidotes in Emergency Situations, 11 T.A.R. (October 2002) - Filed October 22, 2002; effective April 5, 2003. (10-26)
- 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)

Blank

pg. 12

## **PROPOSED RULES**

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

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

Presented herein are proposed amendments 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 amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 26<sup>th</sup> Floor, William R. Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243-0293, and in the Administrative Procedures Division of the Department of State, 8<sup>th</sup> Floor, William R. Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243-0310, 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 the proposed amendments, contact: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3<sup>rd</sup> Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

The text of the proposed amendments is as follows:

#### **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 “July 31, 2002 to January 1, 2003”, 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 January 1, 2003 except as provided in Rule 0800-1-1-.07 of this chapter.

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

**CHAPTER 0800-1-6  
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 “July 31, 2002” to “January 1, 2003”, 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 January 1, 2003 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 “July 31, 2002” to “January 1, 2003”, 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 January 1, 2003 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 “July 31, 2002” to “January 1, 2003”, 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 January 1, 2003, there are no exceptions.

*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 25th day of November, 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 March, 2002. (11-20)

## **PUBLIC NECESSITY RULES**

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

- 0020 - Board of Accountancy - Public necessity rule dealing with score requirements and grading provisions for written certified public accountant (“CPA”) examinations, chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements, 11 T.A.R. (November 2002) - Filed October 28, 2002; effective August 11, 2003. (10-35)
- 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)
- 1680 - Department of Transportation - Central Services Division Permit Section - Public necessity rules relative to movements of manufactured homes on Tennessee highways, Chapter 1680-2-2 Overweight and Overdimensional Movement on TN Highways, 10 T.A.R. (October, 2002) - Filed September 30, 2002; effective through March 14, 2003. (09-48)

Blank

pg. 16

## **RULEMAKING HEARINGS**

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

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of amendments to rules pursuant to T.C.A. § 68-105-116(a). 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 room 640 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee 37243 at 10:00 a.m. (Central Standard Time) on the 16th day of January, 2003.

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, the Department's ADA Coordinator, at the Department of Commerce and Insurance, 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243, at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Kay Searcy, Administrative Director, Division of Fire Prevention, 500 James Robertson Parkway, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-2981.

### **SUBSTANCE OF PROPOSED RULES**

#### **CHAPTER 0780-2-15 BLASTING STANDARDS**

#### **AMENDMENTS**

Chapter 0780-2-15 Blasting Standards is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

#### **CHAPTER 0780-2-15 BLASTING STANDARDS**

#### **TABLE OF CONTENTS**

0780-2-15-.01	Definitions	0780-2-15-.05	Continuing Education
0780-2-15-.02	Minimum Standards for Blasting; Adoption by Reference	0780-2-15-.06	Blasting Restrictions
0780-2-15-.03	Registration and Fees	0780-2-15-.07	Blasting Storage and Destruction of Materials
0780-2-15-.04	Classification of Registration	0780-2-15-.08	Phosphoric Materials or Binary Materials

**0780-2-15-.01 DEFINITIONS.**

- (1) For purposes of this chapter, except where the context otherwise requires, the definitions applicable to this chapter are those found in T.C.A. § 68-105-102. In addition, the following definitions are applicable to the standards adopted in rule 0780-2-15-.02:
  - (a) “Blast area” means the area including the blast site and the immediate adjacent area within the influence of flying rock, missiles and concussion.
  - (b) “Blast site” means the area where explosive material is handled during loading of the blast hole, including fifty (50) feet in all directions from the perimeter formed by the loaded holes. A minimum of thirty (30) feet can replace the fifty (50) feet requirement if the perimeter for loaded holes is marked and separated from the non-blast site areas by a barrier. The fifty (50) feet distance requirements, as applicable, apply in all directions along the full depth of the blasthole. In underground blasts, at least fifteen (15) feet of solid rib, pillar or broken rock can be substituted for the fifty (50) feet distance.
  - (c) “Blast zone” means the area beyond the blast area that may be influenced by blasting operations. Areas beyond the initial blast area must have reasonable precautionary measures such as posting of signs and guards and redirection of traffic.
  - (d) “Binary explosive” means a blasting explosive formed by mixing or combining two (2) phosphoric materials which must be specifically packaged for that purpose (for example, ammonium nitrate and nitromethane).
  - (e) “Bulk mix” means a mass of explosive material prepared for use in bulk form without packaging.
  - (f) “Bulk mix delivery equipment” means equipment (usually a motor vehicle with or without a mechanical delivery device) that transports explosive materials in bulk form for mixing or loading directly into boreholes or both.
  - (g) “Fire-resistant construction” means construction designed to provide reasonable protection against fire. For exterior walls of magazines constructed of wood, this is defined as the fire resistance equivalency provided by sheet metal of not less than twenty-six (26) gauge.
  - (h) “Flyrock” means any dirt, mud, stone, fragmented rock or other material that is displaced from the point of the blast, traveling in the air or along the ground.
  - (i) “Inhabited building” means any building or structure regularly used in whole or part as a place of human habitation. The term includes any church, school, store, railway passenger station, airport passenger terminal and any other building or structure where people are accustomed to congregate or assemble. The term does not include any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosive materials.
  - (j) “Labeled” means equipment or materials to which has been attached a label, symbol or other identifying mark of an organization that is acceptable to the Commissioner or his or her authorized representative and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

- (k) “Listed” means equipment, materials or services included in a list published by an organization acceptable to the Commissioner or his or her authorized representative and concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states either that the equipment, material or service meets identified standards or has been tested and found suitable for a specified purpose.
- (l) “Manufacturing” means mixing, blending, extruding, assembling, disassembling, chemical synthesis and other functions involved in making a product or device that is intended to explode.
- (m) “Phosphoric materials” means two (2) or more unmixed, commercially manufactured, pre-packaged chemical ingredients (including oxidizers, flammable liquids or solids or similar ingredients) that are not classified as explosives but that, where mixed or combined, form a blasting explosive.

*Authority:* T.C.A. §§68-105-108 and 68-105-116.

**0780-2-15-.02 MINIMUM STANDARDS FOR BLASTING; ADOPTION BY REFERENCE.**

- (1) Unless otherwise provided by applicable law or the provisions of this Chapter, the required minimum standards for blasting in the State of Tennessee shall be those prescribed in T.C.A. Title 68, Chapter 105, et seq. and those in the following publications:
  - (a) The following portions of the Code of Federal Regulations (CFR) that pertain to a specific explosives situation or application:
    1. Code of Federal Regulations, Title 27, Alcohol, Tobacco and Firearms, Chapter I, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Subchapter C, Firearms, Part 55 Commerce in Explosives (most recent edition). This CFR includes conduct of business, storage of explosives and magazine construction.
    2. Code of Federal Regulations, Title 49, Transportation, Subtitle B, Other Regulations Relating to Transportation, Chapter I, Research and Special Programs Administration, Department of Transportation, Subchapter C, Hazardous Materials Regulations, Part 172 Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Part 173 Shippers, General Requirements for Shipments and Packagings, Part 177, Carriage by Public Highway and Part 178, Specifications for Packagings. This CFR includes classification, packaging and transportation.
    3. Code of Federal Regulations, Title 49, Transportation, Subtitle B, Other Regulations Relating to Transportation, Chapter III, Federal Motor Carrier Safety Administration, Department of Transportation, Subchapter B, Federal Motor Carrier Safety Regulations, Part 383, Commercial Driver’s License Standards; Requirements and Penalties, Part 384, State Compliance with Commercial Driver’s License Program, Part 393, Parts and Accessories Necessary for Safe Operation, Part 396, Inspection, Repair, and Maintenance and Part 397, Transportation of Hazardous Materials; Driving and Parking Rules (most recent edition). This CFR includes transportation of explosives.
    4. Code of Federal Regulations, Title 29, Labor, Subtitle B, Regulations Relating to Labor, Chapter XVII, Occupational Safety and Health Administration, Department of Labor, Part 1910, Oc-

cupational Safety and Health Standards, Subpart H, Hazardous Materials and Part 1926, Safety and Health Regulations for Construction, Subpart U, Blasting and the Use of Explosives (most recent edition). This CFR includes materials hazard communications and work place safety around blasting and drilling operations.

5. Code of Federal Regulations, Title 30, Mineral Resources, Chapter I, Mine Safety and Health Administration, Department of Labor, Subchapter K, Metal and Nonmetal Mine Safety and Health, Part 56, Safety and Health Standards, Surface Metal and Nonmetal Mines, Subpart E, Explosives and Part 57, Safety and Health Standards, Underground Metal and Non-Metal Mines, Subpart E, Explosives and Subchapter O, Coal Mine Safety and Health, Part 72, Health Standards for Coal Mines and Part 75, Mandatory Safety Standards, Underground Coal Mines, Subpart N, Explosives and Blasting (most recent edition). This CFR includes mine safety.
  6. Code of Federal Regulations, Title 30, Mineral Resources, Chapter VII, Office of Surface Mining Reclamation and Enforcement, Department of the Interior (most recent edition). This CFR includes blasting in open pits and coal mines, blasting in proximity of inhabited buildings, pre-blast surveys and notification of plans to conduct blasting.
- (2) The codes adopted by reference herein shall not be construed as adopting any agency or procedure for administration or enforcement purposes.
  - (3) In the event of a conflict or inconsistency among codes adopted by reference herein, the more stringent code provision shall prevail, except as specified in paragraph (4) below.
  - (4) All persons governed by this rule shall conform to the adopted standard that is specifically applicable to the application or endeavor.

*Authority: T.C.A. §§68-105-108 and 68-105-116.*

**0780-2-15-.03 REGISTRATION AND FEES.**

- (1) The Department shall have the following four (4) classifications of registration:
  - (a) Blaster;
  - (b) Limited Blaster;
  - (c) Handler; and
  - (d) Firm.
- (2) An applicant for registration as a blaster shall:
  - (a) Submit a non-refundable application fee of fifteen dollars (\$15.00) with the application form prescribed by the Department;
  - (b) Pass the examination prescribed by the Department;
  - (c) Provide proof of having obtained one (1) year previous practical experience under the supervision of a registered, experienced blaster; and

- (d) Pay a registration fee of one hundred twenty dollars (\$120.00).
- (3) An applicant for registration as a limited blaster shall:
- (a) Submit a non-refundable application fee of fifteen dollars (\$15.00) with the application form prescribed by the Department;
  - (b) Pass the examination prescribed by the Department;
  - (c) Provide proof of having obtained one (1) year previous practical experience under the supervision of a registered, experienced limited blaster; and
  - (d) Pay a registration fee of seventy-five dollars (\$75.00).
- (4) An applicant for registration as a handler shall:
- (a) Submit a non-refundable application fee of fifteen dollars (\$15.00) with the application form prescribed by the Department;
  - (b) Submit a registration fee of thirty dollars (\$30.00) with the application form prescribed by the Department; and
  - (c) Certify, by means of the applicant's signature, knowledge of storage, security and accountability regulations established by applicable statutes, rules, and adopted standards.
- (5) An applicant for registration as a firm shall:
- (a) Submit a non-refundable application fee of fifteen dollars (\$15.00) with the application form prescribed by the Department;
  - (b) Submit a registration fee of one hundred fifty dollars (\$150.00) with the application form prescribed by the Department; and
  - (c) Submit proof of insurance required by T.C.A. § 68-105-112.
- (6) An applicant for registration by reciprocity shall submit an application. The application must be accompanied by a non-refundable application fee of fifteen dollars (\$15.00), the registration fee required by this chapter and a letter of good standing from the reciprocal state. The registration fee will be determined by the above-referenced classification scheme.
- (7) A certificate of registration shall expire three (3) years following the date of its issuance or renewal and is invalid on that date unless renewed. Each registrant shall be required to renew by submitting an application for the same to the Department, along with a renewal fee of one hundred twenty dollars (\$120.00) for blasters, seventy-five dollars (\$75.00) for limited blasters, thirty dollars (\$30.00) for handlers, and one hundred fifty dollars (\$150.00) for firms.
- (8) An applicant for renewal of a blaster's, limited blaster's or handler's registration shall also submit proof of having obtained the continuing education credits, required in rule 0780-2-15-.05 of this chapter during the preceding renewal period.

- (9) A late fee of twenty-five dollars (\$25.00) will be assessed against a registrant who renews registration late, but before one (1) year, after the date of its expiration. An application must be submitted along with the applicable renewal fee to the Department.
- (10) A registrant who fails to renew registration within one (1) year after expiration shall reapply for registration, pay the applicable fee and take the examination approved by the Department.
- (11) The Department will issue to each registrant a pocket identification card.
- (12) An applicant who fails an examination for registration may retake the examination after thirty (30) days after the test date without paying another application fee. An applicant who fails the examination twice shall reapply and pay the required application fee.
- (13) Registration certificates or pocket identification cards that have been lost, misplaced or destroyed may be replaced upon submission of a fee of fifteen dollars (\$15.00).
- (14) No registration issued under this chapter may be assigned or transferred.

**Authority:** T.C.A. §§68-105-106, 65-105-108, 68-105-112, 68-105-113, 68-105-114 and 68-105-116.

#### **0780-2-15-.04 CLASSIFICATIONS OF REGISTRATION.**

- (1) Blaster:
  - (a) A blaster is a person who is in responsible charge of any or all of the following during a blasting operation:
    - 1. Direct supervision of the loading of explosives and firing of a blast;
    - 2. Testing/inspection of initiation systems;
    - 3. Control of initiation devices;
    - 4. Completion and signature of the blaster's report and or blast records;
    - 5. Duties of handler as described in (3) below.
  - (b) The blaster shall be present when the charge is detonated.
  - (c) The blaster shall complete and sign a record for each blast pursuant to the requirements of T.C.A. § 68-105-107.
- (2) Limited blaster:
  - (a) A limited blaster is a person who is in responsible charge of individual blasts that shall not exceed five (5) pounds of explosives for each blast. A limited blaster is a person who is in responsible charge any or all of the following for individual blasts:
    - 1. Direct supervision of loading of explosives and firing of a blast;

2. Testing/inspection of initiation systems;
  3. Control of initiation devices;
  4. Completion and signature of the blaster's report and or blast records;
  5. Duties of handler as described in number three (3) below.
- (b) The limited blaster shall be present when the charge is detonated.
- (c) The limited blaster shall complete and sign a record for each blast pursuant to the requirements of Tenn. Code. Ann. § 68-105-107.
- (3) Handler:
- (a) A handler is a person who engages in any or all of the following activities:
    1. Ensures the explosives in the handler's control are secured;
    2. Ensures explosives are properly stored in approved magazines or are properly attended;
    3. Directs the transportation of explosives;
    4. Maintains inventory of explosive materials.
  - (b) A handler shall comply with all applicable statutes, rules and adopted standards.
  - (c) A handler may engage in blasting activity; provided, the handler engages in such operations under the direct supervision of a blaster or limited blaster.
- (4) Firm:
- (a) A firm is an entity engaged in blasting activity which purchases, receives or takes possession of explosives.

**Authority:** T.C.A. §§68-105-106, 68-105-108, 68-105-113, 68-105-114 and 68-105-116.

**0780-2-15-.05 CONTINUING EDUCATION.**

- (1) Beginning January 1, 2004 and as a prerequisite to renewing registration, the registrant shall have obtained the following continuing education credit:
  - (a) For renewals in 2004, five (5) hours of continuing education credits will be required for blasters; three (3) hours of continuing education credits will be required for limited blasters and two (2) hours of continuing education credits will be required for handlers.
  - (b) For renewals in 2005, eight (8) hours of continuing education credits will be required for blasters; four (4) hours of continuing education credits will be required for limited blasters and three (3) hours of continuing education credits will be required for handlers.

- (c) For renewals in 2006 and thereafter, sixteen (16) hours of continuing education credits will be required for blasters; eight (8) hours of continuing education credits will be required for limited blasters and six (6) hours of continuing education credits will be required for handlers.
- (2) A continuing education course must be approved by the Commissioner or his or her authorized representative before the registrant will be granted credit for the course.
- (3) The registrant shall provide verification to the Commissioner or his or her authorized representative of having obtained the continuing education credits required by this rule. Verification consists of a form certifying attendance at the course and the number of continuing education hours obtained at the course and signed by both the registrant and the course instructor.
- (4) The registrant shall submit to the Commissioner or his or her authorized representative the registrant's verification form after taking the course and prior to the expiration of his or her registration. The registrant is responsible for ensuring timely submittal of the required verification. Documentation that shows that the registrant self-taught himself or herself without course instruction will not be accepted for continuing education credit.
- (5) In order to obtain approval to provide course instruction, the course provider shall submit to the Commissioner or his or her authorized representative materials including an outline of the course instruction, biography of the instructor, the methods and tools that will be utilized in the course, number of instruction hours provided and the dates and times the course will be offered. A course provider seeking approval of a course pursuant to this paragraph shall submit the required documentation no later than ten (10) business days prior to the first offering of the course.
- (6) A blaster, limited blaster or handler may apply on an individual basis for continuing education credit for a course which has not been approved in advance by the Commissioner or his or her authorized representative by submitting an agenda, number of instructional hours provided, the dates and times the course was offered, verification of attendance by both the registrant and the course instructor and any additional information requested by the Commissioner or his or her authorized representative as necessary for review of the course. A blaster, limited blaster or handler seeking approval of a course pursuant to this paragraph shall submit the required documentation no later than thirty (30) days after having taken the class. No credit for the course will be awarded unless and until the course is approved by the Commissioner or his or her authorized representative.
- (7) Credit may be granted for educational offerings which cover blasting-related topics such as those listed in paragraph (8) below which are consistent with the purpose of continuing education. Training may include a combination of classroom and/or practical field exercises.
  - (a) The viewing of video tapes is not acceptable for continuing education credit unless incorporated into a course wherein an instructor is available to accurately respond to questions raised from the viewing and correct any outdated information contained in the video tape.
  - (b) Acceptable sources of training are any in-state or out-of-state individuals, associations or entities that provide or deliver courses of instruction, training or educational sessions.
- (8) The following list is not a complete list of continuing education topics, but the list represents acceptable course content:
  - (a) Job site:

1. Blast planning (including measuring the blast zone and selection of the drill bit size);
  2. Blast site safety (including loading of holes, initiation of the blast and firing of the shot);
- (b) Commerce in explosives (Federal and State requirements);
- (c) United States Department of Transportation requirements (including proper packaging and labeling and commingling hazardous material);
- (d) Subjects related to explosives, which can include the following:
1. New products;
  2. Magazine housekeeping;
  3. Blast design;
  4. Safety;
  5. Packing and unpacking explosives;
  6. Storage practices;
  7. Magazine construction;
  8. Placarding;
  9. Handling misfires.
- (9) Registrants who take more than the required continuing education for the previous renewal period will not be permitted to carry-over the credit hours into the next renewal cycle.
- (10) The Commissioner may conduct random audits of registrants and continuing education courses to assure compliance with this rule. Each registrant is responsible for maintaining sufficient records which may be used to support claimed continuing education credits.

*Authority:* T.C.A. §§68-105-108, 68-105-116 and 58-105-121.

**0780-2-15-.06 BLASTING RESTRICTIONS.**

- (1) Flyrock traveling in the air or along the ground that could result in personal injury or property damage shall not be cast from the point of the blast.
- (2) The Commissioner or his or her authorized representative may require that special precautions be employed to reduce or control flyrock when a flyrock violation results from a blasting operation.
- (3) Unless prior approval has been given by the Commissioner or his or her authorized representative, tunneling and surface blasting operations shall only be conducted during daylight hours. A written request for approval for blasting during nighttime hours must be submitted to the Commissioner or his or her authorized representative at least five (5) days in advance of the blasting operation at night. The Commissioner or his

or her authorized representative may grant an exception to the five (5) day advance notice requirement in emergency circumstances as long as the Commissioner or his or her authorized representative has sufficient relevant information concerning the blasting operation to make a determination.

- (4) A written request for approval of all non-emergency variations from the law or rules will require five (5) days advance notice to the Commissioner or his or her authorized representative. The Commissioner or his or her authorized representative may grant an exception to the five (5) day advance notice requirement in emergency circumstances as long as the Commissioner or his or her authorized representative has sufficient relevant information to make a determination.

*Authority:* T.C.A. §§68-105-108 and 68-105-116.

#### **0780-2-15-.07 BLASTING STORAGE AND DESTRUCTION OF MATERIALS.**

##### (1) Blasting Storage

- (a) Temporary storage. Explosives may be stored in an approved Type 2 or Type 3 magazine or day box for one (1) day's usage only during daytime blasting operations and must be removed from temporary storage at the end of the work day. If the blasting firm or blaster has requested the Commissioner or his or her authorized representative to approve blasting at night, then the Commissioner or his or her authorize representative shall also consider appropriate requests to approve the extended use of the temporary storage during the nighttime blasting operations. The magazine or day box must be attended by a blaster, limited blaster or handler who has access to and knowledge of the contents. A blaster, limited blaster or handler must also be actively and directly in contact with, or within the sight of, without the aid of telescopic optical equipment or electronic devices, the temporary storage to maintain sufficient control.
- (b) If the Commissioner finds emergency circumstances exist, in order to protect the safety and wellbeing of the public and individuals connected to the blasting operation, the Commissioner may direct his or her authorized representative to barricade the storage containers, relocate the explosive materials, or restrict the quantity of explosive materials that are handled at any temporary storage location.
- (c) The blaster, limited blaster, handler or blasting firm shall post the following warning sign on all normal access roads to unattended explosive storage magazines:

DANGER  
NEVER FIGHT EXPLOSIVE FIRES  
EXPLOSIVES ARE STORED ON THIS SITE  
CALL\_\_\_\_\_

The sign shall be weather-resistant with a reflective surface and lettering at least two (2) inches or fifty (50) millimeters high.

- (d) The blaster, limited blaster, handler or blasting firm shall provide reasonable precautionary measures such as posting of signs and guards and redirection of traffic in areas beyond the initial blast area in the blast zone.
- (2) Destruction of Materials

- (a) In the event that it becomes necessary to destroy any explosives that present an immediate risk to people or property, all handling of explosives shall cease and the manufacturer or the Commissioner or his or her authorized representative shall be contacted immediately for assistance in coordination with other law enforcement officials. The manufacturer's directions for destruction shall be followed without deviation unless otherwise directed by the Commissioner or his or her authorized representative.

*Authority:* T.C.A. §§68-105-108 and 68-105-116.

**0780-2-15-.08 PLOSOPHORIC MATERIALS OR BINARY MATERIALS.**

- (1) Mixed or combined plosophoric materials are explosive materials and shall be stored and used in the same manner.
- (2) Storage. Plosophoric materials shall be permitted to be stored in the same magazine with explosive materials, provided their total weight is included in the weight of explosives permitted in the magazine in order to comply with the quantity-distance requirements of the American Table of Distances for Storage of Explosives. Storage shall not introduce a hazard due to chemical incompatibility.
- (3) Use
  - (a) Binary or plosophoric materials shall be mixed or combined at the point of use and the procedures recommended by the manufacturer shall be followed strictly.
  - (b) Because the mixing or combining of plosophoric components produces an explosive material, the number of packages of the binary/plosophoric material combined at any one time shall be limited to the number needed for immediate use. The Commissioner or his or her authorized representative may waive this limitation upon appropriate request; provided, the extra binary/plosophoric material produced can be handled and stored in the same manner as explosive material.
- (4) Record Keeping and Reporting
  - (a) Thefts of plosophoric materials during transportation, storage and use shall be reported to the Commissioner or his or her authorized representative and law enforcement, as required for loss or thefts of explosive materials.

*Authority:* T.C.A. §§68-105-108 and 68-105-116.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of November, 2002. (11-23)

### 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 Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CST) on the 16th 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, 1<sup>st</sup> Fl., Cordell Hull Building 425 5<sup>th</sup> Ave. North, Nashville, TN, (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-.01, Definitions, is amended by adding the following language as a new, appropriately numbered paragraph:

- ( ) Associated Structures – Any structures grouped by some common factor. Structures can be associated with the teeth and jaws by anatomic and/or functional factors (e.g., the teeth and jaws are associated with the major and minor muscles of mastication and all of their attachments; the teeth and jaws are associated with the oral pharynx, nasal pharynx and the airway including the trachea). All structures adjacent, attached, or contiguous with the teeth and jaws are associated structures (e.g., the teeth and jaws are associated with the head and neck, including the face and its components orbital, nasal, aural, etc.).

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

Rule 0460-2-.06, Specialty Certification, is amended by deleting paragraph (6) in its entirety and substituting instead the following language, so that as amended the new paragraph (6) shall read:

Oral and Maxillofacial Surgery.

- (a) Required Documentation – An applicant must to the Board Administrative Office certification of successful completion of advanced study in Oral and Maxillofacial Surgery of four (4) years or more in a graduate school or hospital recognized by the Council on Dental Education or the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative office.

- (b) Examination – An applicant must successfully complete a written examination, and if the Board in its discretion requires, a practical examination. The content of those examinations will be as determined by the Board.
  
- (c) Oral and Maxillofacial Surgery is the specialty area of the treatment of teeth or jaws or associated structures that includes the performance of the following areas of Oral and Maxillofacial Surgery, as described in the most recent version of the Parameters of Care of the American Association of Oral and Maxillofacial Surgeons:
  - 1. Patient assessment;
  - 2. Anesthesia in outpatient facilities, as provided in T.C.A. §§ 63-5-105 (6) and 63-5-108 (f).
  - 3. Dentoalveolar surgery;
  - 4. Oral and craniomaxillofacial implant surgery;
  - 5. Surgical correction of maxillofacial skeletal deformities;
  - 6. Cleft and craniofacial surgery;
  - 7. Trauma surgery;
  - 8. Temporomandibular joint surgery;
  - 9. Diagnosis and management of pathologic conditions;
  - 10. Reconstructive surgery including the harvesting of extra oral/distal tissues for grafting to the oral and maxillofacial region; and
  - 11. Cosmetic maxillofacial surgery.
  
- (d) The Tennessee Board of Dentistry determines that the dental practice of Oral and Maxillofacial Surgery includes the following procedures which the Board finds are included in the curricula of dental schools accredited by the American Dental Association, Commission on Dental Accreditation, post-graduate training programs or continuing education courses:
  - 1. Rhinoplasty;
  - 2. Blepharoplasty;
  - 3. Rytidectomy;
  - 4. Submental liposuction;
  - 5. Laser resurfacing;
  - 6. Browlift, either open or endoscopic technique;
  - 7. Platysmal muscle plication;

8. Dermabrasion;
  9. Otoplasty; and
  10. Lip Augmentation.
- (e) Any licensee who lacks the following qualifications and nevertheless performs the procedures and surgery identified in subparagraph (d) shall be subject to discipline by the Board under T.C.A. § 63-5-124, including provisions regarding malpractice, negligence, incompetence or unprofessional conduct:
1. Has successfully completed a residency in Oral and Maxillofacial Surgery accredited by the American Dental Association, Commission on Dental Accreditation (CODA); and
  2. Has successfully completed a clinical fellowship, of at least one continuous year in duration, in esthetic (cosmetic) surgery recognized by the American Association of Oral and Maxillofacial Surgeons or by the American Dental Association Commission on Dental Accreditation; or
  3. Holds privileges, either:
    - (i) Issued by a credentialing committee of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to perform these procedures in a hospital setting; or
    - (ii) Issued by a credentialing committee for an ambulatory surgical center licensed by the State of Tennessee and accredited by either the JCAHO or the American Association for Ambulatory Health Care (AAAHC).
- (f) The Board, pursuant to its authority under T.C.A. § 63-5-124, determines that performance of the surgery and procedures identified in subparagraph (d) without the qualifications set out above shall be considered unprofessional conduct and subject to discipline by the Board as such.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-112, and 63-5-113.

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of March, 2003.  
(11-18)

**THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400**  
**DIVISION OF GROUND WATER PROTECTION**

There will be a series of hearings before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated 68-221-403(a)(2). These hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place as follows:

January 21, 2003 at 1:30 PM (CST)  
Jackson Environmental Assistance Center  
Conference Room A  
362 Carriage Drive  
Jackson, Tennessee 38305

January 23, 2003 at 1:30 PM (EST)  
Knoxville Environmental Assistance Center  
East Side Conference Room  
2700 Middlebrook Pike, Suite 220  
Knoxville, Tennessee 37921

January 28, 2003 at 1:30 PM (CST)  
17<sup>th</sup> Floor, L & C Tower  
Conference Room B  
Nashville, Tennessee 37243-1540

Written comments will be considered if received by close of business, February 11, 2003 at the Division of Ground Water Protection, 10th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1540.

Any individuals with disabilities who wish to participate in these proceedings (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 made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such findings), to allow time for the Department of Environment and Conservation to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Environment and Conservation's ADA Coordinator at L & C Annex, 7th Floor, 401 Church Street, Nashville, TN 37243-0437 and (615) 532-0059.

For a copy of this notice of rulemaking hearing contact Mr. Dan E. Hoover, Tennessee Department of Environment and Conservation, 10th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1540 and (615) 532-0772. Copies of draft rules are available for review at the following locations:

Johnson City Environmental Assistance Center  
2305 Silverdale Road  
Johnson City, TN 37601-2162

Knoxville Environmental Assistance Center  
2700 Middlebrook Pike, Suite 220  
Knoxville, TN 37921

Chattanooga Environmental Assistance Center  
540 McCallie Avenue, Suite 550  
Chattanooga, TN 37402-2013

Cookeville Environmental Assistance Ctr.  
1221 South Willow Avenue  
Cookeville, TN 38506

Nashville Environmental Assistance Center  
711 R.S. Gass Bldg.  
Nashville, TN 37243

Columbia Environmental Assistance Center  
2484 Park Plus Drive  
Columbia, TN 38401

Jackson Environmental Assistance Center  
362 Carriage House Drive  
Jackson, TN 38305

Division of Ground Water Protection  
10th Floor, L & C Tower  
401 Church Street  
Nashville, TN 37243-1540

#### **SUMMARY OF PROPOSED RULES**

This rulemaking includes elimination of certain application and permitting requirements for pumpers and installers (Chapter 1200-1-6-.18) and the addition and increases of certain fees for services (Chapter 1200-1-6-.21).

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of November, 2002. (11-29)

#### **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 Commissioner, to consider the adoption and promulgation of rules and amendments to rules pursuant to the Tennessee Code Annotated Sections 11-1-101 and 68-131-401 et seq.; the Tennessee Environmental Protection Fund Act, Tennessee Code Annotated Section 68-203-101 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 5<sup>th</sup> Floor Conference Room, L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 PM CST on January 22, 2003.

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 January 22, 2003 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, 12<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, TN 37243, (615) 532-0059. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

## **SUBSTANCE OF PROPOSED RULES**

### **AMENDMENTS**

Rule Chapter 1200-1-18 Lead Based Paint Abatement is amended by Reserving Rules 1200-1-11-.02, 1200-1-11-.03 and 1200-1-11-.04 and adding the following new Rules 1200-1-18-.05 Lead-Based Paint Hazards and 1200-1-18-.06 Lead-Based Paint Pre-Renovation Education to read as follows:

### **NEW RULES**

#### **TABLE OF CONTENTS**

Rule 1200-1-18-.02 [Reserved]

Rule 1200-1-18-.03 [Reserved]

Rule 1200-1-18-.04 [Reserved]

Rule 1200-1-18-.05 Lead-Based Paint Hazards

- (1) Scope and Applicability. [40 CFR 745.61]
- (2) Reserved
- (3) Definitions. [40 CFR 745.63]
- (4) Reserved
- (5) Lead-Based Paint Hazards. [40 CFR 745.65]

#### **1200-1-18-.05 LEAD-BASED PAINT HAZARDS [SUBPART D]**

- (1) Scope and Applicability. [40 CFR 745.61]
  - (a) This subpart identifies lead-based paint hazards.
  - (b) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.
  - (c) Nothing in this Rule requires the owner of property (ties) subject to these standards to evaluate the property (ties) for the presence of lead-based paint hazards or takes any action to control these conditions if one or more of them is identified.
  - (d) Identification of the lead hazards as defined on and after the effective date of this Rule, shall be disclosed to the property owner and occupants of the target housing and child-occupied facility.

- (2) Reserved [40 CFR 745.62]
- (3) Definitions. [40 CFR 745.63]

The following definitions apply to Rule Chapter 1200-1-18, unless otherwise specified.

“Arithmetic mean” means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

“Chewable surface” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an “accessible surface” as defined in 42U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

“Common area group” means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

“Concentration” means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

“Deteriorated paint” means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

“Dripline” means the area within 3 feet surrounding the perimeter of a building.

“Friction surface” means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

“Impact surface” means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.

“Interior window sill” means the portion of the horizontal window ledge that protrudes into the interior of the room.

“Lead-based paint hazard” means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in Rule 1200-1-18-.05(5).

“Loading” means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

“Mid-yard” means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

“Play area” means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children’s possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

“Residential building” means a building containing one or more residential dwellings.

“Room” means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

“Soil sample” means a sample collected in a representative location using ASTM E1727, “Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques,” or equivalent method.

“Weighted arithmetic mean”-, means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample’s result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing  $60 \frac{1}{4}\text{g}/\text{ft}^2$ , a composite sample (three subsample) containing  $100 \frac{1}{4}\text{g}/\text{ft}^2$ , and a composite sample (4 subsamples) containing  $110 \frac{1}{4}\text{g}/\text{ft}^2$  is  $100 \frac{1}{4}\text{g}/\text{ft}^2$ . This result is based on the equation  $[60+(3*100)+(4*110)]/(1+3+4)$ .

“Window trough” means, for a typical double-hung window, the portion of the exterior windowsill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window “well.”

“Wipe sample” means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, “Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, “Standard Specification for Wipe Sampling Materials for Lead in Surface Dust.”

- (4) Reserved [40 CFR 745.64]
- (5) Lead-Based Paint Hazards. [40 CFR 745.65]
  - (a) Paint-Lead Hazard. A paint-lead hazard is any of the following:
    1. Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in subparagraph (b) of this paragraph.
    2. Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a doorknob that knocks into a wall or a door that knocks against its door frame.
    3. Any chewable lead-based painted surface on which there is evidence of teeth marks.

4. Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.
- (b) Dust-Lead Hazard. - A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40  $\frac{1}{4}$ g/ft<sup>2</sup> on floors or 250  $\frac{1}{4}$ g/ft<sup>2</sup> on interior window sills based on wipe samples.
  - (c) Soil-Lead Hazard. - A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million ( $\frac{1}{4}$ g/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.
  - (d) Work Practice Requirements. - Applicable certification, occupant protection, and clearance requirements and work practice standards are found in Rule 1200-1-18-.01. The work practice standards in that Rule do not apply when treating paint-lead hazards of less than:
    1. Two square feet of deteriorated lead-based paint per room or equivalent,
    2. Twenty square feet of deteriorated paint on the exterior building, or
    3. Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

**Authority:** T.C.A. §11-1-101 and §§68-131-401 et seq.

#### **1200-1-18-.06 LEAD-BASED PAINT PRE-RENOVATION EDUCATION**

- (1) Scope and Applicability. [40 CFR 745.80 and 40 CFR 745.82]
- (2) Definitions. [40 CFR 745.83]
- (3) Proprietary Information. [40 CFR 745.84]
- (4) Availability of Information.
- (5) Information Distribution Requirements. [40 CFR 745.85]
- (6) Record Keeping Requirements. [40 CFR 745.86]
- (7) Enforcement and Penalties. [40 CFR 745.87]
- (8) Acknowledgment and Certification Statements. [40 CFR 745.88]
- (9) Violations.

#### **RULE 1200-1-18-.06 RESIDENTIAL PROPERTY RENOVATION [SUBPART E]**

- (1) Purpose, Scope and Applicability. [40 CFR 745.80 and 40 CFR 745.82]
  - (a) The purpose of this Rule is to require each person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.
  - (b) Except as provided in subparagraph (c) of this paragraph, this Rule applies to all renovations of target housing performed for compensation.
  - (c) This Rule does not apply to renovation activities that are limited to the following:

1. Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.
  2. Emergency renovation operations.
  3. Renovations in target housing in which a written determination has been made by an inspector (certified by the State of Tennessee pursuant Rule 1200-1-18-.01(7)) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.
- (2) Definitions. [40 CFR 745.83 and 40 CFR 745.103]

The following definitions apply to Rule Chapter 1200-1-18, unless otherwise specified.

“The Act” means Tennessee Code Annotated 68-131-401, et seq., Tennessee Lead-Based Paint Abatement Certification Act.

“Agent” means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser’s representative who receives all compensation from the purchaser.

“Available” means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

“Commissioner” means the Commissioner of the Tennessee Department of Environment and Conservation or his authorized representative.

“Common area” means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

“Contract for the purchase and sale of residential real property” means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Emergency renovation operations” means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

“Evaluation” means a risk assessment and/or inspection.

“Foreclosure” means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

“Housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

“HUD” means the U.S. Department of Housing and Urban Development.

“Inspection” means:

- (a) A surface-by-surface investigation to determine the presence of lead-based paint as provided in subparagraph (8)(b) of Rule Chapter 1200-1-18-0.1, Lead-Based Paint Activities and
- (b) The provision of a report explaining the results of the investigation.

“Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

“Lead-based paint free housing” means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

“Lead-based paint hazard” means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in Rule Chapter 1200-1-18-.05(5).

“Lessee” means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

“Lessor” means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

“Multi-family housing” means a housing property consisting of more than four dwelling units.

“Owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

“Pamphlet” means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information.)

“Person” means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

“Purchaser” means an entity that enters into an agreement to purchase an interest in target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

“Reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

“Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in Rule Chapter 1200-1-18-.01(8). The term renovation includes (but is not limited to): the removal or modification to painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

“Renovator” means any person who performs for compensation a renovation.

“Residential dwelling” means:

- (a) A single-family dwelling, including attached structures such as porches and stoops; or
- (b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

“Risk assessment” means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (a) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (b) Visual inspection;
- (c) Limited wipe sampling or other environmental sampling techniques;
- (d) Other activity as may be appropriate; and
- (e) Provision of a report explaining the results of the investigation.

“Seller” means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

The term “seller” also includes:

- (a) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (b) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

“Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

“TSCA” means the Toxic Substances Control Act, 15 U.S.C. 2601.

“0-bedroom dwelling” means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

(3) Proprietary Information. [40 CFR 745.84]

(a) General

1. Purpose, Scope, and Applicability.

Any information which is supplied to the Department by persons who are subject to these Rules or by other governmental agencies and which is designated as proprietary information (as defined in subpart 2(viii) of this subparagraph) shall be handled by the Department as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary, any information supplied to the Department under or relating to these Rules shall be available for public review at any time during the State’s normal business hours.

2. Definitions.

The following terms shall be defined as indicated for the purposes of this paragraph and this paragraph only:

- (i) “Access” is the ability and opportunity to gain knowledge of Proprietary Information in any manner whatsoever.
- (ii) “Authorized person” is any person authorized to receive Proprietary Information that such authorization shall be granted in writing by the Commissioner.
- (iii) “Document” is any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproduction of such things by any means or process; and sound, voice, or electronic recordings in any form.
- (iv) “Document Control Number” is the unique number assigned by the document control officer to any document containing Proprietary Information.
- (v) “Document Control Officer” is the individual authorized by the Commissioner in writing to be responsible for all incoming and outgoing documents identified as containing Proprietary Information.
- (vi) “Information” is knowledge which can be communicated by any means.
- (vii) “Instruction” is fully informing individuals in writing of their responsibilities for safeguarding Proprietary Information and the security procedures they shall follow.

- (viii) "Proprietary Information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the Department by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary must, at a minimum, answer the questions in items (I) through (IV) of this subpart. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.
- (I) Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?
- (II) What measures have you taken to guard against undesired disclosure of the information to others?
- (III) To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
- (IV) Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

3. Policy.

Department employees are prohibited from disclosing, in any manner and to any extent not authorized by law or regulations, any Proprietary Information coming to them in the course of their employment or official duties. Proprietary Information is to be held in confidence, protected in accordance with the procedures described in this paragraph, and released only to authorized persons.

(b) Responsibilities.

1. Commissioner

The Commissioner is responsible for:

- (i) Designating a document control officer;
- (ii) Assuring that all Department employees receiving and handling Proprietary Information receive instruction as to their responsibilities for controlling Proprietary Information;
- (iii) Maintaining a record which lists all employees who have authorized access to Proprietary Information;

- (iv) Obtaining a “Confidentiality Agreement” from all employees having access to Proprietary Information;
- (v) Obtaining a “Confidentiality Agreement upon Transfer or Termination” from all employees having access to Proprietary Information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;
- (vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combinations;
- (vii) Taking appropriate disciplinary action concerning any Department employees who fail to comply with the requirements of this paragraph; and
- (viii) Notifying the person submitting Proprietary Information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document Control Officer.

The Document Control Officer is responsible for the maintenance, control and distribution of all Proprietary Information received by the Department as follows:

- (i) Logging of all Proprietary Information as received by the Department, both incoming and outgoing;
- (ii) Assigning a document control number to each document received containing Proprietary Information;
- (iii) Maintaining a system which identifies employees authorized to receive Proprietary Information;
- (iv) Releasing Proprietary Information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;
- (v) Maintaining a system to insure that any Proprietary Information transmitted to field locations is received;
- (vi) Maintaining at Department offices a system for retrieval of documents that are furnished to other program offices;
- (vii) Authorizing and supervising the reproduction and destruction of Proprietary Information; and
- (viii) Assuring that recipients of Proprietary Information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released Proprietary Information the same day.

3. Employees.

Employees are responsible for:

- (i) Controlling all Proprietary Information entrusted to them;

- (ii) Only discussing Proprietary Information with authorized persons;
- (iii) Never leaving the Proprietary Information unattended when not properly stored;
- (iv) Never discussing Proprietary Information over the telephone except upon approval of the document control officer should the Proprietary Information be needed in an emergency situation;
- (v) Storing the Proprietary Information as specified in part (c)5 of this paragraph when not in use and at the close of business;
- (vi) Not reproducing Proprietary Information documents. Additional copies must be obtained through the document control officer; and
- (vii) Reporting immediately possible violations of these regulations to the Commissioner.

(c) Procedures.

1. Receipt and Handling.

The document control officer shall:

- (i) Receive all information claimed as proprietary and confidential which is submitted to the Department;
- (ii) Log in all Proprietary Information received by the Department;
- (iii) Assign a document control number to all Proprietary Information;
- (iv) Attach a Proprietary Information cover sheet to the document;
- (v) Release Proprietary Information only to authorized persons; and
- (vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions at Rule 1200-1-18-.06(3)(a)2(viii)(I)-(IV) and other information as may be required, determine whether to approve or deny it, in part or in whole.

2. Transmission.

- (i) Proprietary Information must be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope must reflect the address of the recipient with the following additional wording on the front side of the inner envelope:

“Confidential Business - To Be Opened By Document Control Officer Only.”

The outer envelope must reflect the normal address without the additional wording.

- (ii) All requests to the document control officer for Proprietary Information must be in writing and signed by the requesting employee.

- (iii) Proprietary Information may be hand carried to other Department facilities by authorized persons providing the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried should be packaged as described in subpart (i) of this part.
- (iv) Proprietary Information within a Department office shall be hand delivered only by an authorized person. At no time shall Proprietary Information be transmitted through inner office mailing channels.

3. Reproduction.

Proprietary Information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

4. Destruction.

Proprietary Information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a record of destruction in the appropriate log and notify the person submitting the Proprietary Information.

5. Storage.

- (i) Documents containing Proprietary Information must be stored within a locked cabinet so as to limit access to authorized persons.
- (ii) Keys and/or combinations to cabinets and/or rooms where the data is stored must be issued only to an authorized person.

(d) Transmittal Outside Department Offices.

Proprietary Information shall not be transmitted outside Department offices without the approval of the Commissioner and such information must be transmitted by the document control officer in accordance with part (c)2 of this paragraph. The person submitting the Proprietary Information shall be notified when such occurs.

(e) Release to EPA.

Notwithstanding any requirement of this paragraph seemingly to the contrary, Proprietary Information may be released to the U.S. Environmental Protection Agency in connection with the Commissioner's implementation or his responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of Proprietary Information to EPA, however, will be made with a confidentiality claim and shall be accompanied by the written statement received by the Department pursuant to subpart (a)2(viii) of this paragraph. Any transmittal of Proprietary Information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The Commissioner shall notify the submitter of Proprietary Information of the release of such information to EPA as soon as practicable - to be no later than 5 days after such release - following receipt of EPA's request for the information.

(4) Availability of Information.

- (a) The Division will respond to all requests for records within 20 days after the date of receipt of such requests.
  - (b) If a facility does not assert a claim of proprietary information at the first opportunity provided by the Division, the Division may release the information without further notice to the facility. In addition, in the case of any information submitted in connection with a certification or accreditation, application, any facility proprietary information claim must be asserted at the time of submission of the information to the Division.
  - (c) If a proprietary information claim is asserted and cannot be resolved in the time period provided for the Division's response to a request, the requestor will be notified of the proprietary information claim within the maximum 20-day time limit provided for the Division's response. In addition, the requestor must be told that the Division has denied the request in order to resolve the proprietary information claim.
- (5) Information Distribution Requirements. [40 CFR 745.85]

(a) Renovations in Dwelling Units.

No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator shall:

1. Provide the owner of the unit with the pamphlet, and comply with one of the following:
  - (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
  - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
2. In addition to the requirements in part (a)1 of this paragraph, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:
  - (i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date, and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.
  - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) Renovations in Common Areas.

No more than 60 days before beginning renovation activities in common areas of multi-family housing, the renovator shall:

1. Provide the owner with the pamphlet, and comply with one of the following:

- (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
  - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
2. Notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the renovator.
  3. Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.
  4. If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notice.

(c) Written Acknowledgment.

Sample language for such acknowledgments is provided in paragraph (7) of this Rule. The written acknowledgments required in subparts (a)1(i), (a)2(i), and (b)1(i) of this paragraph shall:

1. Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.
2. Be either a separate sheet or part of any written contract or service agreement for the renovation.
3. Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

(6) Recordkeeping Requirements. [40 CFR 745.86]

- (a) Renovators shall retain and, if requested, make available to the Commissioner all records necessary to demonstrate compliance with this Rule for a period of 3 years following completion of the renovation activities in target housing.
- (b) Records that must be retained pursuant to subparagraph (a) of this paragraph shall include (where applicable):
  1. Reports certifying that a determination had been made by an inspector (certified pursuant to Rule 1200-1-18-.01(7)) that lead-based paint is not present in the area affected by the renovation, as described in paragraph (1) of this Rule.

2. Signed and dated acknowledgments of receipt as described in subparts (a)1(i), (a)2(i), and (b)1(i) of paragraph (4) of this Rule.
3. Certifications of attempted delivery as described in subpart (a)2(i) of paragraph (4) of this Rule.
4. Certificates of mailing as described in subparts (a)1(ii), (a)2(ii), and (b)1(ii) of paragraph (4) of this Rule.
5. Records of notification activities performed regarding common area renovations, as described in parts (b)3 and (b) 4 of paragraph 4 of this Rule.

(7) Enforcement and Penalties. [40 CFR 745.87]

Enforcement of the provisions of these Rules and Penalties for violations shall be as set forth in Tennessee Code Annotated (T.C.A.) § 68-131-404 and § 68-131-405 of the Act.

(8) Acknowledgment and Certification Statements. [40 CFR 745.88]

(a) Acknowledgment Statement.

1. As required under part (c) 1 of paragraph (4) of this Rule, acknowledgments shall include a statement of receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.
2. Sample acknowledgment language. The following is a sample of language that could be used for such acknowledgments:

I have received a copy of the pamphlet, *Protect Your Family From Lead In Your Home*, informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Unit Address

(b) Certification of Attempted Delivery.

1. When an occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the renovator is permitted (per subpart (a)(2)(i) of paragraph (4) of this Rule) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

2. Sample certification language. The following is a sample of language that could be used under those circumstances:

- (i) Unavailable For Signature.

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Unit Address

Attempted delivery dates and times: \_\_\_\_\_  
\_\_\_\_\_

- (ii) Refusal To Sign.

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Unit Address

Attempted delivery dates and times: \_\_\_\_\_  
\_\_\_\_\_

- (9) Violations.

- (a) It is a violation for a renovator to:

1. Fail or refuse to comply with any provision of this Rule.
2. Fail or refuse to establish and maintain records required by paragraph (6) of this Rule.
3. Fail to or refuse to make available to the Commissioner records, as required by this Rule.
4. Fail to or refuse to permit the Commissioner access to records, as required by this Rule
5. Fail to or refuse to permit the Commissioner entry or inspection of the business premises of persons and firms engaged in renovation during business hours upon presenting credentials identifying themselves as employees of the department.

**Authority:** *T.C.A. §11-1-101 and §§68-131-401 et seq.*

**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  
 2484 Park Plus Drive  
 Columbia, TN 38401  
 (931) 380-3371/ 1-888-891-8332

Knoxville Environmental Assistance Center  
 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  
1100 Pickwick Rd.  
Savannah, TN 38372  
(731) 925-4314

Coffee County-Manchester Public Library  
1005 Hillsboro Highway  
Manchester, TN 37355-2099  
(931) 723-5143

E. G. Fisher Public Library  
1289 Ingleside Ave.  
Athens, TN 37371-1812  
(423) 745-7782

W. G. Rhea Public Library  
400 West Washington Street  
Paris, TN 38242-0456  
(731) 642-1702

Clarksville-Montgomery County Public  
Library  
350 Pageant Lane, Suite 501  
Clarksville, TN 37040-0005  
(931) 648-8826

Art Circle Public Library  
154 East First Street  
Crossville, TN 38555-4696  
(931) 484-6790

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/new.htm> to locate the Department's World Wide Web Site and search under "What's New".

Copies are also available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation  
Division of Solid Waste Management  
5<sup>th</sup> 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: Ms. Adrienne White; 5<sup>th</sup> Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0885 or FAX 615-532-0886. However, such written comments must be received by the Division by 4:30 PM CST, February 7, 2003 in order to assure consideration. For further information, contact Ms. Adrienne White at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of November, 2002. (11-19)

**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 16<sup>th</sup> day of January 2003.

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

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

**SUBSTANCE OF PROPOSED RULES**

Part 3. of subparagraph (a) of paragraph (19) of rule 1200-13-13-.01 Definitions is amended by deleting the comma and phrase “, and whose income does not exceed 250% poverty” so as amended part 3. shall read as follows:

3. A woman who is uninsured, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.

Subparagraph (c) of paragraph (100) of rule 1200-13-13-.01 Definitions is amended by deleting the comma and phrase “, and income does not exceed 250% poverty” so as amended subparagraph (c) shall read as follows.

- (c) A Tennessee resident who is an uninsured woman, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.

Subpart (vi) of part 3. of subparagraph (a) of paragraph (2) of rule 1200-13-13-.02 Eligibility which states “Income does not exceed 250% poverty” is deleted in its entirety.

**Authority:** T.C.A. §§4-5-202, 4-5-203, 71-5-.105, 71-5-109, Executive Order No. 23.inistration

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of November, 2002.(11-26)

**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 16<sup>th</sup> day of January 2003.

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

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

**SUBSTANCE OF PROPOSED RULES**

Part 3. of subparagraph (a) of paragraph (19) of rule 1200-13-14-.01 Definitions is amended by deleting the comma and phrase “, and whose income does not exceed 250% poverty” so as amended part 3. shall read as follows:

3. A woman who is uninsured, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.

Subparagraph (c) of paragraph (100) of rule 1200-13-14-.01 Definitions is amended by deleting the comma and phrase “, and income does not exceed 250% poverty” so as amended subparagraph (c) shall read as follows:

- (c) A Tennessee resident who is an uninsured woman, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.

**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 26th day of November, 2002. (11-27)

**THE BOARD OF MEDICAL EXAMINERS - 0880**

There will be a hearing before the Board of Medical Examiners to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-204, 63-7-123, 63-63-9-106, 63-19-106, and 63-26-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 16th 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, 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, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

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

Rule 0880-2-.14 Specifically Regulated Areas and Aspects of Medical Practice, is amended by deleting paragraph (10) in its entirety and substituting instead the following language, so that as amended, the new paragraph (10) shall read:

- (10) Use of Laser Equipment - Any procedure encompassed within the definition of the practice of medicine contained in T.C.A. § 63-6-204 that is to be performed by use of a laser shall be considered, except as provided in T.C.A. §§ 63-26-102 (5) and 63-9-106, to be the practice of medicine and any person performing such procedure must be under the on-site supervision of a licensed physician.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-204, 63-7-123, 63-63-9-106, 63-19-106, and 63-26-102.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of November, 2002. (11-08)

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

There will be a hearing before the Board of Medical Examiners to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 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 Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 16th 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, 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, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN, 37247-1010, (615) 532-4397.

### **SUBSTANCE OF PROPOSED RULE**

#### **AMENDMENT**

Rule 0880-2-.14 Specifically Regulated Areas and Aspects of Medical Practice, is amended by deleting part (7) (b) 5. in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (11), so that as amended, the new part (7) (b) 5. and the new paragraph (11) shall read:

- (7) (b) 5. In compliance with paragraphs (9) and/or (11) of this rule.
- (11) Prescribing, Dispensing or Administering for Self, Family, and Friends – The Board discourages physicians from prescribing, dispensing or administering medications of any kind for themselves and their family and/or friends. However, the realities of medical practice and the rising cost of health care often dictates that the compassionate physician will be called upon to do so. When this happens the physician shall do so only in compliance with this rule.
  - (a) Self-Prescribing, Dispensing or Administering –
    - 1. A physician cannot have a bona fide physician/patient relationship with him or herself. Consequently, self prescribing, dispensing or administering shall occur only in an emergency situation or when circumstances prevent a physician from obtaining the necessary medication in a timely manner from another physician.
    - 2. At no time shall a physician prescribe, dispense or administer for him or herself any controlled substance in schedules II and/or III.
    - 3. A physician may prescribe, dispense or administer for him or herself controlled substances in schedule IV in emergency situations only.

- (b) Prescribing, Dispensing or Administering for Family and Friends – Treatment of family and friends should be reserved only for minor illnesses or emergency situations.
1. If a physician does undertake the management of a major or extended periods of illness for a family member or a friend the physician shall obtain appropriate consultation.
  2. No schedule II, III or IV controlled substances shall be dispensed or prescribed except in emergency situations or in accordance with part 1.
- (c) Violation of this rule shall constitute grounds for disciplinary action pursuant to T.C.A. § 63-6-214 (b) (1).

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of November, 2002. (11-09)

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

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 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 Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 16<sup>th</sup> day of January, 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, 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 RULE****NEW RULE****TABLE OF CONTENTS**

0880-2-.19 Office Based Surgery

**0880-2-.19 OFFICE BASED SURGERY.** A license to practice medicine issued pursuant to T.C.A. § 63-6-204 authorizes the holder to perform surgery. To the extent that any licensee performs surgery in his or her office rather than a hospital, abortion clinic, or ASTC, that licensee or the governing body of the entity lawfully authorized to practice medicine wherein the surgery is to be performed shall comply with these rules.

- (1) Definitions
  - (a) ACLS (Advanced Cardiac Life Support) - A certification that means a person has successfully completed an advanced cardiac life support course offered by a recognized accrediting organization.
  - (b) ASTC – An ambulatory surgical treatment center licensed by the Department of Health Division of Health Care Facilities.
  - (c) Board – The Tennessee Board of Medical Examiners.
  - (d) Conscious Sedation - A drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are usually required to maintain a patent airway, and spontaneous ventilation is usually adequate. Cardiovascular function is usually maintained.
  - (e) Deep Sedation – a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients often require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.
  - (f) General Anesthesia – A drug induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug induced depression of neuromuscular function. Cardiovascular function may be impaired.
  - (g) Health Care Facilities Reporting System – The system located within the Department of Health Division of Health Care Facilities organized for receipt an analysis of “unusual incident” reports form licensed health care facilities. The contact address is

Unusual Incident Reporting Unit  
Division of Health Care Facilities  
First Floor, Cordell Hull building  
425 Fifth Avenue North  
Nashville, TN 37247-0508  
Fax: (615) 253-4356

- (h) Hospital – A hospital licensed by the Department of Health Division of Health Care Facilities.
  - (i) PALS (Pediatric Advanced Life Support) - A certification that means a person has successfully completed a pediatric advanced life support course offered by a recognized accrediting organization.
  - (j) Physician – A person licensed to practice medicine and surgery pursuant to Tennessee Code Annotated, Title 63, Chapter 6.
  - (k) Regional Block – The administration of local anesthetic agents to interrupt nerve impulses in a major region of the body including spinal blocks, epidural blocks, caudal blocks, upper and lower extremity plexus blocks and intravenous regional anesthetic.
  - (l) Surgery – The excision or resection, partial or complete, destruction, incision or other structural alteration of human tissue by any means (including through the use of lasers) performed upon the body of a living human for purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering, or for aesthetic, reconstructive or cosmetic purposes, to include, but not limited to; incision or curettage of tissue or an organ; suture or other repair of tissue or organ, including a closed or an open reduction of a fracture; extraction of tissue, including premature extraction of products of conception from the uterus; and insertion of natural or artificial implants. Surgery does not include the suturing of minor lacerations.
- (2) Administration - Office based surgery shall be administered in a manner to ensure high quality health services.
- (a) At a minimum the following shall be required for any office in which surgery is to be performed:
    - 1. The physician or governing body shall establish policies and procedures describing organizational structure including lines of authority, responsibilities, and accountability of personnel.
    - 2. The physician or governing body shall be responsible for ensuring the surgical facilities and personnel are adequate and appropriate for the types of procedures performed.
    - 3. Policies and procedures shall be written for the orderly conduct of the surgical office and reviewed on an annual basis.
    - 4. The physician or governing body shall establish written policies governing the following:
      - (i) Specific operative and/or invasive procedures which may be performed in the office.
      - (ii) Types of anesthesia services performed.
      - (iii) Responsibilities of the health care personnel providing services.
      - (iv) Infection control practices to be followed.
      - (v) Handling and disposal of infectious and hazardous waste.

- (vi) Procedures to be followed in the event that a patient requires transfer to a hospital, either electively or emergently.
  5. Compliance with all applicable local, state, and federal laws, codes and regulations.
  6. For all surgical procedures the level of sterilization shall meet current OSHA standards.
  7. For all surgical procedures, equipment used must be up to the manufacturer's recommended specifications. If anesthesia equipment is used, it must also meet current standards.
  8. When inhalation anesthetics are administered, there should be a reliable and adequate system for scavenging waste anesthetic gases.
- (b) Surgical procedures that may not be performed in a physician's office under any circumstances include the following:
1. Surgeries that require major invasion of body cavities, including intracranial, intraabdominal (except for urological procedures, insertion of catheters or drains), and intrathoracic.
  2. Procedures that are anticipated to generally result in a blood loss in excess of two hundred and fifty cubic centimeters (250 cc).
  3. Major peripheral vascular surgeries.
  4. Major orthopedic surgeries.
  5. Surgeries on children two (2) years of age or younger.
  6. Emergency surgeries except those that are unexpectedly incident to another authorized surgical procedure being performed in the physician's office.
- (c) Withholding Resuscitative Services - The physician or governing body shall maintain and establish policies and procedures which allow for the withholding of CPR and compliance with DNR orders for individual patients.
- (d) Patient Rights - 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 be informed if physician does not have professional liability coverage for the proposed procedure.
  8. To obtain a copy of their personal medical record.
  9. To have appropriate assessment and management of pain.
  10. To be free from mental and physical abuse. Should this right be violated, the physician must notify the Tennessee Department of Human Services, Adult Protective Services or Tennessee Department of Children Services immediately as required by law.
- (e) Establish a performance improvement program that reviews on a regular basis the following:
1. Infection control practices; and
  2. Safety practices; and
  3. Complications; and
  4. Documentation of periodic reviews to determine the appropriateness of clinical decision-making; and
  5. The overall quality of care.
- (3) Quality of Care
- (a) Personnel/Credentialing/Training
1. Regular staff education programs and training sessions shall be provided and documented which include sessions on emergencies, life safety, medical equipment, utility systems, infection control, and hazardous waste practices.
  2. All operating room and recovery personnel who provide clinical care shall be qualified to perform services commensurate with the appropriate levels of education training and experience and if any of the assigned duties in the office incident to the surgery falls within the scope of practice of a profession regulated pursuant to Tennessee Code Annotated Title 63, they shall hold a current Tennessee license for a profession authorized by law to perform those duties.
  3. Unlicensed personnel may not be assigned duties or responsibilities that require professional licensure. Duties assigned to unlicensed personnel shall be in accordance with their training, education, and experience and under the direct supervision of a licensed and qualified health care practitioner.
  4. The physician who performs the surgery shall have privileges to perform that surgery in a local hospital within reasonable proximity to the place in which the surgery is to be performed. This physician must also have a standing transfer agreement with the hospital in the event transfer becomes necessary.
- (b) Pre-operative evaluations - Pre-procedure counseling and preparation shall be provided and documented in the patient's medical record which shall include the following:

1. An evaluation of the condition of the patient and potential risk associated with treatment options.
2. That if the patient has a pre-existing medical or other conditions that they have been referred to an appropriate specialist for a pre-operative consultation and/or to another appropriate facility.
3. That if the surgery requires general anesthesia, deep sedation or major regional anesthesia the patient has an American Society of Anesthesiologist and Physical Classification I or II.
4. That if the surgery requires conscious sedation the patient has an American Society of Anesthesiologist and Physical Status Classification I, II, and/or III.
5. That an adequate support system exists for the patient to provide for necessary follow-up care.
6. A medical history and physical examination performed within thirty (30) days of the procedure that includes information such as: allergies, current medications, pertinent laboratory values, pertinent medical conditions/impairments, presumptive diagnosis, and plan.
7. That there has been full compliance with the informed consent requirements of these rules.

(c) Medical Records

1. Content- The medical record shall be maintained for each person receiving medical care and shall include:
  - (i) Patient identification.
  - (ii) History and physical examination.
  - (iii) Baseline vital signs including blood pressure, pulse and respiration.
  - (iv) Any pertinent progress notes, operative reports, consent forms, anesthesia records, recovery records.
  - (v) Pertinent laboratory reports.
  - (vi) Pertinent x-ray reports.
  - (vii) Any communication with other medical personnel.
  - (viii) Allergies and any untoward drug reactions.
  - (ix) Discharge summary including instructions for self care and instructions for obtaining postoperative emergency care.
2. The physician or governing body shall develop policies and procedures to address retention of active records, retirement of inactive records, timely entry of data in records, and release of information contained in records in accordance with rules of the Board of Medical Examiners.
3. Patient information shall be treated as confidential and protected from loss, tampering, alterations, destruction, and unauthorized or inadvertent disclosure.

4. Records shall be organized in a consistent manner that facilitates continuity of care.
- (d) Informed Consent – Informed consent shall be obtained prior to performance of the surgery, documented in the medical record and shall include the following:
1. Disclosure and discussion of the nature and objective of the anesthesia planned and surgery to be performed.
  2. Disclosure and discussion of the risks and benefits of the surgery and alternatives to the surgery.
  3. Disclosure to the patient of the hospital in which the operating physician has surgical privileges and to which the patient will be transported in case it becomes necessary. If the patient chooses not to receive care at a hospital in which the operating physician has surgical privileges the informed consent shall include the name of the physician at the hospital chosen by the patient who will accept responsibility for the patient should the need for transfer arise.
- (e) Transfer Protocols
1. The physician or governing body shall develop a patient referral system for referrals to other health care providers when extended or emergency services are needed.
  2. The physician or governing body shall have a written transfer agreement with a licensed hospital which includes the name of the physician who would accept responsibility for a patient if the operating physician is unable to provide the necessary care at that hospital.
- (f) Reporting Requirement - Any incident during or following surgery which results in patient death within thirty (30) days, unscheduled transport of patients to a hospital for observation or treatment for a period in excess of twenty-four (24) hours, or unscheduled hospital admission of patients within seventy-two (72) hours of discharge from office surgery shall be required to be reported within fourteen (14) days to the Health Care Facilities Reporting System for purposes of analysis and reporting to the Board at least annually regarding the aggregate data .
- (4) Clinical
- (a) Level I Office Surgery
1. Scope - Level I Office Surgery includes the following:
    - (i) Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal oral preoperative tranquilization of the patient.
    - (ii) Liposuction involving the removal of less than 250 cc supematant fat is permitted.
    - (iii) Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).

- (iv) Pre-operative medications not required or used other than minimal preoperative tranquilization of the patient; anesthesia is local, topical, or none. No drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient is permitted in Level I Office Surgery.
- (v) Chances of complication requiring hospitalization are remote.

2. Standards for Level I Office Surgery.

- (i) Training Required. Surgeon's continuing medical education should include proper dosages; management of toxicity or hypersensitivity to regional anesthetic drugs. Basic Life Support Certification is recommended but not required.
- (ii) Equipment and Supplies Required. Oxygen, positive pressure ventilation device; Epinephrine (or other vasopressor), Corticoids, Antihistamine and Atropine if any anesthesia is used.
- (iii) Assistance of Other Personnel Required. No other assistance is required, unless the specific surgical procedure being performed requires an assistant.

(b) Level II Office Surgery - Scope

1. Level II Office Surgery is that in which pre-operative medication and sedation are used intravenously, intramuscularly, inhalation, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and liposuction involving the removal of up to 1000cc supernatant fat.
2. Level II Office surgery includes any surgery in which the patient is placed in a state which allows the patient to tolerate unpleasant procedures while maintaining adequate cardio respiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.
3. Transfer Agreement Required. The physician must have a transfer agreement with a licensed hospital within reasonable proximity if the physician does not have staff privileges to perform the same procedure as that being performed in the outpatient setting at a licensed hospital within reasonable proximity.
4. Level of Anesthetic. Local or peripheral major nerve block, including Bier Block, plus intravenous or intramuscular sedation, but with preservation of vital reflexes.
5. Training Required. The surgeon must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or comparable background, training, or experience. The surgeon and one assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support or have a qualified anesthetic provider practicing within the scope of the provider's license to manage the anesthetic.

6. Equipment and Supplies Required shall be the same as needed for general anesthesia.section 20i-emergencies.
    - (i) Suction devices, endotracheal tubes, laryngoscopes, etc.
    - (ii) Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.
    - (iii) Double tourniquet for the Bier block procedure.
    - (iv) Monitors for blood pressure/EKG/Oxygen saturation.
    - (v) Emergency intubation equipment.
    - (vi) Adequate operating room lighting.
    - (vii) Emergency power source able to produce adequate power to run required equipment for a minimum of two (2) hours.
    - (viii) Appropriate sterilization equipment.
    - (ix) IV solution and IV equipment.
  
  7. Assistance of Other Personnel Required. The surgeon must be assisted by a qualified anesthesia provider as follows: An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in Board of Medical Examiners (BME) Rule 0880-3-.04 or a registered nurse may be utilized to assist with the anesthesia, if the surgeon is ACLS Certified. An assisting anesthesia provider cannot function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, osteopathic physician, registered nurse, licensed practical nurse, or operating room technician. A licensed physician, a licensed physician assistant, a licensed registered nurse with post-anesthesia care unit experience or the equivalent, credentialed in Advanced Cardiac Life Support or, in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia.
- (c) Level IIA Office Surgery
1. Scope - Level IIA office surgeries are those Level II office surgeries with a maximum planned duration of five (5) minutes or less and in which chances of complications requiring hospitalization are remote.
  2. Standards for Level IIA Office Surgery.
    - (i) The standards set forth in Level II must be met except for the requirements set forth in part 0880-2-.19 (4) (b) 7. regarding assistance of other personnel.

(ii) Assistance of Other Personnel Required. During the procedure, the surgeon must be assisted by a physician assistant who is licensed pursuant to Title 63 or a Title 63 licensed Certified Nurse Practitioner, Physician Assistant, Registered Nurse, or Licensed Practical Nurse. Additional assistance may be required by specific procedure or patient circumstances. Following the procedure, a physician must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia. The monitor must be certified in Advanced Cardiac Life Support, or, in the case of Pediatric patients, Pediatric Advanced Life Support.

(d) Level III Office Surgery

1. Scope

(i) Level III Office Surgery are those which involve, or reasonably should require, the use of a general anesthesia or major conduction anesthesia and pre-operative sedation. This includes the use of:

(I) Intravenous sedation beyond that defined for Level II office surgery;

(II) General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; or

(III) Major Conduction anesthesia.

(ii) Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I or II are appropriate candidates for Level III office surgery.

2. Hospital Staff Privileges required. The physician must have staff privileges to perform the same procedure as that being performed in the outpatient setting at a licensed hospital within reasonable proximity.

3. Level of Anesthetic.

(i) General Anesthetic: loss of consciousness and loss of vital reflexes with probably requirement of external support of pulmonary or cardiac functions.

(ii) Major Conduction: epidural, spinal, caudal.

4. Training Required.

(i) Surgeon must have documentation of training to perform the particular surgical procedures and must have knowledge of the principles of general anesthesia.

(ii) The surgeon and at least one assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support.

(iii) Emergency procedures related to serious anesthesia complications should be formulated, periodically reviewed, practiced, updated, and posted in a conspicuous location.

5. Equipment and Supplies Required.
    - (i) Equipment, medications, including immediate access to at least thirty-six (36) ampules of dantrolene, and monitored post-anesthesia recovery must be available in the office if volatile inhalation agents are used and/or if Succinylcholine is used in a procedure.
    - (ii) The office, in terms of general preparation, equipment, and supplies, must be comparable to a free standing ambulatory surgical center, including, but not limited to, recovery capability, and must have provisions for proper record keeping including an anesthetic and post anesthetic record which should include monitoring of items listed in subpart 0880-2-.19 (4) (d) 5. (iii).
    - (iii) Blood pressure monitoring equipment; EKG; end tidal CO<sub>2</sub> monitor; pulse oximeter, precordial or esophageal stethoscope, emergency intubation equipment and a temperature monitoring device.
    - (iv) Table capable of trendelenburg and other positions necessary to facilitate the surgical procedure.
  6. Assistance of Other Personnel Required. An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in BME Rule 0880-3-.04, must administer the general or regional anesthesia and an M.D., D.O., Registered Nurse, Licensed Practical Nurse, Physician Assistant, or Operating Room Technician must assist with the surgery. The anesthesia provider cannot function in any other capacity during the procedure. A licensed physician, a licensed physician assistant, or a licensed registered nurse with post-anesthesia care unit experience or the equivalent, and credentialed in Advanced Cardiac Life Support, or in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient has recovered from anesthesia
- (e) Anesthesia Services In General
1. General Anesthesia, regional anesthesia, and deep sedation shall be administered only by:
    - (i) A qualified board eligible or board certified anesthesiologist who is credentialed by a hospital to provide anesthesia.
    - (ii) A certified registered nurse anesthetist (CRNA).
  2. Conscious sedation shall be administered only by personnel approved for general anesthesia or by personnel educated and trained to administer sedative medicines.
  3. After the completion of general anesthesia, regional anesthesia and deep sedation, patients shall be constantly attended by anesthesia personnel until the patient is responsive and discharged from anesthesia care.
  4. A log of inspections of the anesthesia equipment shall be made each day the equipment is used. Notation of inspection in the anesthesia record will suffice for this requirement.
  5. A record of all services and maintenance performed on all anesthesia machines, vaporizers, and ventilators shall be kept on file along with documentation of regular preventive maintenance as recommended by the manufacturer.

6. When general anesthesia and/or succinylcholine are administered, the facility shall maintain or have immediate access to thirty-six (36) ampules of dantrolene for injection. If dantrolene is administered, appropriate monitoring must be provided postoperatively.
  7. The person administering and/or monitoring anesthesia shall be different from the practitioner performing the surgery and shall have no other responsibilities during the procedure.
  8. During all anesthesia, except minor blocks, the patients oxygenation, ventilation, circulation, and temperature shall be continually evaluated.
- (f) Pre, intra, postoperative Services
1. Personnel administering anesthesia or sedation shall be physically present with the patient during the intra-operative period.
  2. At least two (2) on duty members of the office shall be trained in emergency resuscitation. At least one (1) of these individuals shall be trained in advance resuscitative techniques (ACLS or PALS whichever is appropriate for the surgery or scope of services being provided) and be immediately available during all procedures and until all patients are discharged home.
  3. An operative/procedure note shall be created for each surgery describing the procedure performed, the techniques used, participating personnel and their titles, post-operative diagnosis, type of anesthesia, and complications. Where similar procedures are performed at an office routinely, partially pre-printed forms may be utilized as a guide, provided that original data and conclusions applicable to the specific patient are contemporaneously entered to create a complete report.
  4. A post-procedure note shall be created for each surgery and completed prior to discharge of a patient from the office, which shall include such post-procedure data as the patient's general condition, vital signs, treatments ordered, and all drugs, prescribed, administered or dispensed including dosages and quantities.
  5. All patients who receive anesthesia, except minor regional blocks, shall receive appropriate post-operative management. A patient may be excused from a stay in the recovery area only by a specific order of the anesthesia personnel or the operating physician.
  6. The patient shall be transported to the recovery area accompanied by a member of the anesthesia care team who is knowledgeable about the patient's condition. The patient shall be continually evaluated and treated during transport appropriate to the patient's condition.
  7. An oral report on the patient's condition shall be given to the health care personnel responsible for the patient in the recovery area who were not present in the anesthetizing location.
  8. The patient's recovery area condition shall be evaluated and recorded in the medical record. The blood pressure, pulse rate, respiratory rate, blood oxygen saturation, level of consciousness, and when appropriate temperature shall be assess at least every fifteen (15) minutes until they are stable and returned to pre-operative baseline values and/or normal values consistent with the patient's age and medical condition.
  9. Objective criteria, for example a scoring system, shall be established to determine when a patient is "fit" to be discharged.

10. The recovery area shall be staffed by at least one (1) registered professional nurse, physician assistant, or physician who is certified and experienced in advance cardiac life support and post-anesthesia care.
11. A physician shall remain in the facility and be immediately available to diagnose and treat patient complications until all patients who have had anesthesia other than minor blocks are discharged from the facility.
12. Before discharge, the patient shall be given written and verbal instructions for follow-up care and advice concerning complications. Emergency phone number shall be provided to the patient.
13. If sedation, regional block, or general anesthesia have been used, a responsible adult must be available to accompany the patient and be instructed with regard to the patient care and follow-up.
14. When anesthesia services are provided to children, the required equipment, medication and resuscitative capabilities shall be appropriately sized for the children.
15. The surgical suites shall be constructed, equipped and maintained to assure the safety of patients and personnel.
16. Sufficient space shall be available to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient, anesthesia machine (when present) and all monitoring equipment.
17. Pharmaceutical Services - The office shall maintain and provide drugs and biologicals in a safe and effective manner in accordance with accepted standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times.
18. Ancillary Services - All ancillary or supportive health medical services, including but not limited to, radiological, pharmaceutical, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.
19. Environmental Services
  - (i) Policies and procedures shall be developed to address:
    - (I) Safety
    - (II) Security
    - (III) Control of hazardous materials and waste
    - (IV) Emergency preparedness
    - (V) Life Safety
    - (VI) Medical equipment; and,

## (VII) Utility Systems.

- (ii) The staff shall be oriented and educated about the environment of care and possess knowledge and skills to perform responsibilities pursuant to the environment of care policies and procedure.
- (iii) The building and grounds shall be suitable to services provided and patients served.

## 20. Emergencies

- (i) At a minimum, there shall be a reliable source of oxygen, suction, resuscitation equipment, and emergency drugs. The type of equipment and amounts of drugs shall be appropriate to the level of anesthesia performed. For conscious, general anesthesia and deep sedation, at least the following equipment and supplies shall be available:
  - (I) Full and current crash cart which shall, at a minimum, include, the following resuscitative medications:
    - I. adrenalin (epinephrine) 1: 10,000 dilution;
    - II. adrenalin (epinephrine) 1: 1000 dilution;
    - III. atropine 1 mg/ml;
    - IV. benadryl (diphenhydramine)
    - V. calcium chloride 10%
    - VI. dextrose 50%
    - VII. dilantin (phenytoin)
    - VIII. dopamine
    - IX. heparin
    - X. inderal (propranolol)
    - XI. isuprel
    - XII. lanoxin (digoxin)
    - XIII. lasix (furosemide)
    - XIV. xylocaine (lidocaine)
    - XV. magnesium sulfate 50%
    - XVI. narcan (naloxone)
    - XVII. pronestyl (procainamide)

- XVIII. sodium bicarbonate 50mEq
  - XVIX. solu-medrol (methylprednisolone)
  - XX. verapamil hydrochloride
  - XXI. Mazicon
  - XXII. Adenosine
  - XXIII. Labetalol
  - XXIV. Nitroglycerin
  - XXV. Nitroprusside
  - XXVI. Cardizem IV
  - XXVII. Amiodarone Hydrochloride
- (II) Suction devices, endotracheal tubes, laryngoscopes, etc.,
  - (III) Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.
  - (IV) Double tourniquet for the Bier block procedure.
  - (V) Monitors for blood pressure/EKG/Oxygen saturation.
  - (VI) Emergency intubation equipment.
  - (VII) Adequate operating room lighting.
  - (VIII) Appropriate sterilization equipment.
  - (IX) Defibrillator.
  - (X) IV solution and IV equipment.
- (ii) Written emergency protocols shall be established to manage emergencies related to conscious, deep sedation, and general anesthesia including but not limited to laryngospasm, bronchospasm, emesis and aspiration, airway occlusion by foreign body, angina pectoris, myocardial infarction, hypertension, hypotension allergic and toxic reactions, convulsions, hyperventilation, and hypoventilation.
  - (iii) Appropriate fire fighting equipment, appropriate signage, emergency power capabilities and lighting shall be available.
  - (iv) Emergency generators shall not be required if the office does not utilize general anesthesia that renders the patient incapable of self-preservation but should have an emergency power source able to produce adequate power to run required equipment for a minimum of two (2) hours.

- (v) There shall be written protocols for internal and external disasters such as fire, tornadoes, floods, and earthquakes.
- (5) Miscellaneous
- (a) Liposuction - Liposuction procedures performed pursuant to these rules shall be performed only by physicians with appropriate training following prescribed national professional guidelines. These procedures shall be within the scope of practices of the health care practitioner and capabilities of the office. Provided however, no such procedures may be performed if the anticipated supernatant fat removal is to be greater than 1000 cc.
  - (b) Laser surgery - Laser surgeries performed pursuant to these rules require written policies and procedures that include but are not limited to laser safety, education, training, and control of the laser equipment when other persons are performing laser treatments. A safe environment shall be maintained for laser surgery.
  - (c) For all surgery procedures performed in a physician's office, the maximum planned duration of all surgical procedures combined must not exceed four hours. The surgeon should not keep patients past midnight in a physician's office unless the office where the surgery is actually performed is accredited by the AAAASF or the AAAHC and the scope (reason) and procedures for the overnight stay monitoring and coverage is included in the office policy and procedure manual. An overnight stay in the physician's office shall be strictly limited to the physician's office. If the patient has not recovered sufficiently to be safely discharged within 12 hours, the patient must be transferred to a hospital for continued post-operative care.
  - (d) Any violation shall be grounds for disciplinary actions before the board pursuant to T.C.A. § 63-6-214 (b) (1).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-6-204 and 63-6-214.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of November, 2002. (11-10)

### **BOARD OF OSTEOPATHIC EXAMINATION - 1050**

There will be a hearing before the Board of Osteopathic Examination to consider the promulgation of amendments to rules and new 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, 63-6-204, 63-9-101, 63-9-107, 63-9-111, and 63-9-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 27th 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, 1<sup>st</sup> Flr., Cordell Hull Building, 425 5<sup>th</sup> 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 1050-2-.08 Licensure Retirement and Reactivation, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) Licensees who wish to retain their licenses but not actively practice osteopathic medicine may avoid compliance with the licensure renewal process by obtaining from, completing and submitting to the Board Administrative Office an affidavit of retirement form along with any documentation which may be required by the form.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-107.

Rule 1050-3-.02 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, 63-9-101, and 63-9-112.

Rule 1050-3-.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, and is further amended by deleting paragraph (5) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (6) in its entirety, so that as amended, the new subparagraph (1) (c) and the new paragraph (5) shall read:

- (1) (c) Skull – AP/PA and Lateral Skull Only, and Sinuses
- (5) 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 part 1050-3-.07 (2) (b) 2.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-112.

Rule 1050-3-.05 Obtaining and Upgrading Full and Limited Certification, is amended by adding the following language as new subpart (1) (b) 4. (iv) and renumbering the remaining subpart accordingly, and is further amended by adding the following language as new part (1) (c) 3.:

- (1) (b) 4. (iv) A clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up; and
- (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, 63-9-101, and 63-9-112.

Rule 1050-3-.07 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.
  - 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. Spine – includes AP/PA, Lateral, and Oblique cervical views; AP/PA and Lateral (excluding Breathing Lateral) thoracic views; AP/PA Lateral and Oblique lumbar views; AP/PA, Lateral, and Oblique sacral and sacroiliac views; AP/PA and Lateral coccyx views.
- (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, 63-9-101, and 63-9-112.

Rule 1050-3-.08 Examination for Certification, is amended by adding the following language as new paragraph (5) and renumbering the remaining paragraph accordingly:

- (5) After the fourth (4<sup>th</sup>) 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, 63-9-101, and 63-9-112.

## NEW RULE

### TABLE OF CONTENTS

1050-2-.19 Medical Professional Corporations and Medical Professional Limited Liability Companies

#### **1050-2-.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 MPLLC 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 (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) Managers or Governors of an MPLLC
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 MPLLC.
- (d) Practice Limitations
1. Physician members, officers, or governors of an MPLLC, acting individually or on behalf of, or collectively as the MPLLC, 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 MPLLC.

2. A physician shall not enter into an employment, compensation, or other contractual arrangement with an MPLLC that may violate the code of ethics or which gives the MPLLC 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 MPLLC.
  4. Nothing in these rules shall be construed as prohibiting an MPLLC 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 § 63-6-204.
  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 MPLLC 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 MPLLCs 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 MPLLC 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 MPLLC 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 MPLLC 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 MPLLC 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 MPLLC, 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 MPLLC 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 MPLLC 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, 63-6-204, 63-9-101, and 63-9-111.

**REPEALS**

- 1050-4-1-.01 Purpose - is repealed.
- 1050-4-1-.02 Definitions - is repealed.
- 1050-4-1-.03 Coverage and Scope of Act - is repealed.
- 1050-4-1-.04 Ownership of M.P.C. Shares - is repealed.
- 1050-4-1-.05 Requirements as to Form of Corporate Charter - is repealed.
- 1050-4-1-.06 Filing of Charter - is repealed.
- 1050-4-1-.07 Corporate Practice Limitations - is repealed.
- 1050-4-1-.08 Practice Beyond Scope of Charter - is repealed.
- 1050-4-1-.09 Prohibition on Physician Combining with Other Professions - is repealed.
- 1050-4-1-.10 Ethical Prohibition on Physicians’ Ownership of a Non-M.P.C. - is repealed.
- 1050-4-1-.11 Corporate Name - is repealed.
- 1050-4-1-.12 Officers and Directors - is repealed.
- 1050-4-1-.13 Requirements as to Form of Stock Certificate - is repealed.
- 1050-4-1-.14 Offering of M.P.C. Shares Prohibited - is repealed.
- 1050-4-1-.15 Regulation of M.P.C. Shares by the Board - is repealed.
- 1050-4-1-.16 Filing of Annual Statement of Qualifications - is repealed.
- 1050-4-1-.17 Termination of M.P.C. Status - is repealed.
- 1050-4-2-.01 Purpose - is repealed.
- 1050-4-2-.02 Definitions - is repealed.
- 1050-4-2-.03 Coverage and Scope of Rules - is repealed.
- 1050-4-2-.04 Membership in MPLLC’S - is repealed.
- 1050-4-2-.05 Persons Permitted to be Managers or Governors - is repealed.
- 1050-4-2-.06 Dissolution - is repealed.
- 1050-4-2-.07 Foreign MPLLC’S - is repealed.
- 1050-4-2-.08 Delivery of Articles – is repealed.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of November, 2002. (11-05)

**BOARD OF EXAMINERS IN PSYCHOLOGY - 1180**

There will be a hearing before the Tennessee Board of Examiners in Psychology to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 23rd 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, 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 RULE****AMENDMENT**

Rule 1180-1-.09, Professional Ethics, is amended by deleting paragraphs (1), (2), (3), and (4) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (5), (6), and (7), so that as amended, the new paragraphs (1), (2), (3), and (4) shall read:

- (1) The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its ethical standards the specific "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.). The version adopted by the Board was approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.
- (2) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board's ethical standards shall be grounds for disciplinary action pursuant to T.C.A. § 63-11-215 (b) (1).
- (3) A copy of the A.P.A. "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" may be obtained from the Order Department of the A.P.A. at 750 First Street, NE, Washington, DC 20002-4242 or by phone at (202) 336-5510, or on the Internet at <http://www.apa.org/ethics>.
- (4) Applicability of the Ethical Standards. The activity of a licensee or certificate holder subject to the Ethical Standards may be reviewed only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethical Standards.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-201, 63-11-204, 63-11-206, 63-11-213, and 63-11-215.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of November, 2002. (11-17)

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

There will be a hearing before the Tennessee Board of Social Worker Certification and Licensure to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-23-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 17<sup>th</sup> 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, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

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

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

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

- (3) (j) Except as provided in subparagraph (k), an applicant shall submit with his application, as required by Rule 1365-1-.10, copies of his personal records / logs and copies of his supervisor(s) records / logs of the two thousand (2000) clinical contact hours of supervised experience.
- (3) (k) Applicants who did not complete their two thousand (2000) clinical contact hours of supervised experience in the past ten (10) years are exempt from the requirements of subparagraph (j) if the state in which the applicant is presently licensed required records / logs of the two thousand (2000) clinical contact hours of supervised experience to be kept. Unless the applicant demonstrates to the Board's satisfaction that requirements for licensure in the state which the applicant is presently licensed are substantially equivalent to Tennessee's requirements, licensure by reciprocity is not available if the state in which the applicant is presently licensed did not require records / logs of the two thousand (2000) clinical contact hours of supervised experience to be kept. Such applicant must apply for licensure by examination.

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

Rule 1365-1-.10, Supervision, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Both the supervisor and supervisee must maintain records of the experience and the supervision process. Except as provided in rule 1365-1-.05 (3) (k), verification of supervision will be submitted by both the supervisor and supervisee at the time the application for licensure is filed in the Board's administrative office.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of November, 2002. (11-04)

## **THE TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Region II Conference Room of the Tennessee Wildlife Resources Agency, Region II Building, 5105 Edmondson Pike, Nashville, Tennessee, at 9:00 a.m., local time, on the 23rd day of January, 2002.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids 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 Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Carolyn Wilson, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204 and telephone number (615)781-6594.

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

### **SUBSTANCE OF PROPOSED RULES**

#### **CHAPTER 1660-1-11 RULES AND REGULATIONS GOVERNING SHOOTING**

##### **AMENDMENT**

Rule 1660-1-11-.02 Operation of Private Wildlife Preserve is amended by adding a new subparagraph at the end of paragraph (3) Animal Possession and Release noted as subparagraph (c) which shall read as follows:

- (c) The following species of Cervidae may only be held by wildlife preserves that originate from a herd outside of the state that has been certified as Chronic Wasting Disease free prior to January 1, 2000 or from a herd inside the State of Tennessee that is enrolled in a Chronic Wasting Disease surveillance program recognized by TWRA.
  - 1. Elk/Red Deer (*Cervus elaphus*)
  - 2. Black-tailed Deer/Mule Deer (*Odocoileus hemionus*)

Rule 1660-1-11-.02 Operation of Private Wildlife Preserve is amended by deleting paragraph (4) Facilities in its entirety and substituting the following language so that as amended the paragraph shall read as follows:

(4) Facilities

- (a) The land area for which a permit will be issued must contain a minimum of twenty (20) acres and this land must be in one continuous tract. On wildlife preserves where big game species are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve (12) gauge wire and such fence shall be a minimum of eight (8) feet in height. On wildlife preserves where only swine are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve (12) gauge wire, and such fence shall be a minimum of four (4) feet in height. In addition, wildlife preserves where swine are hunted, a dig-out apron must be placed on the inside of the fence and attached at the base of the fence in a manner to prevent the escape of the swine being held. A dig-out apron shall be woven wire fence of a minimum twelve (12) gauge wire, and such fence shall be a minimum of three (3) feet in width. On wildlife preserves where foxes and raccoons are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve (12) gauge wire with a maximum of four (4) inch spacing, anchored at the base and such fence shall be a minimum of seventy-two (72) inches in height. On wildlife preserves where rabbits are hunted, the boundaries must be fenced with wire fence with a maximum of two (2) inch spacing anchored at the base and such fence shall be a minimum of thirty-six (36) inches in height. Any wildlife preserve that requires its boundaries to be fenced must have any entrance to such wildlife preserve posted with signs identifying it as a wildlife preserve. Any wildlife preserve that does not have to be fenced must have its boundaries posted every fifty (50) yards with signs identifying it as a private wildlife preserve

Paragraph (5) of Rule 1660-1-11-.02 Records is amended by adding a new subparagraph at the end of paragraph (5) noted as subparagraph (b) which shall read as follows:

- (b) Operators and/or owners of a wildlife preserve must have documentary evidence showing the name and address of the supplier and date of acquisition of any animals held or released on a wildlife preserve.

Rule 1660-1-11-.02 is further amended by adding a new paragraph at the end of the rule noted as paragraph (7) Health Requirements which shall read as follows:

(7) Health Requirements

- (a) All animals possessed, released or harvested on a wildlife preserve are subject to disease testing upon request by TWRA or the Tennessee Department of Agriculture. Failure to comply with such a request is grounds for cancellation, non-renewal or non-approval of a wildlife preserve permit, at the discretion of the Executive Director of TWRA.

**CHAPTER 1660-1-17**  
**RULES AND REGULATIONS GOVERNING THE COMMERCIAL USE OF WILDLIFE**

**AMENDMENT**

Rule 1660-1-17-.01(3) (b) is amended by inserting the words “and wild turkey” after the word “deer” so that as amended the rule shall read:

- (b) Finished products and parts of legally taken white-tailed deer and wild turkey except meat and antlers in velvet.

Rule 1660-1-17-.01(4) (b) is amended by inserting the words “the striped bass (*Morone saxatilis*) X white bass (*Morone chrysops*) hybrid” after the word “mollusks,” so that as amended the rule shall read:

- (b) The meat of legally obtained non-native fish, reptiles, mollusks, the striped bass (*Morone saxatilis*) X white bass (*Morone chrysops*) hybrid, and commercially raised trout.

**Authority:** T.C.A. §§70-1-206 and 70-4-201

**CHAPTER 1660-1-20**  
**RULES AND REGULATIONS GOVERNING**  
**THE DEER MANAGEMENT ASSISTANCE PROGRAM (DMAP)**

**NEW RULE**

1660-1-20-.01 General Provisions

- (1) Eligibility
  - (a) Landowners or persons who control hunting access to at least 1,000 contiguous huntable acres in the State of Tennessee.
  - (b) A yearly deer management assistance permit enrollment fee of \$1,000 will be required for admission into the DMAP program. A reduced fee of \$350 will be assessed if the DMAP participant contracts the development of a management plan with a wildlife biologist not employed with the Tennessee Wildlife Resources Agency (TWRA).
  - (c) Private wildlife biologists must possess a Bachelor’s degree in wildlife management or a closely related field and experience equivalent to at least three years of professional wildlife work, or a Master’s degree in wildlife management or a closely related field and experience equivalent to at least one year of professional wildlife work.
- (2) Enrollment
  - (a) Entrants must submit a completed application form to the TWRA by a date as determined by the TWRA.

- (b) The enrollment application form will be provided by TWRA, and must include a complete listing of the names and addresses of landowners who own lands within the boundaries of the proposed DMAP area, as well as the map and parcel numbers for all tracts included in the DMAP area. The application must also specify a Group Leader, who will be responsible for all agreement negotiations with TWRA. A statement of the applicant's deer management goals must also be included on the application. A topographic or aerial map of the property with boundaries marked on the map must accompany the application along with a description of the property location. The applicant must also submit a statement signed by the landowner that the participant has hunting rights to the DMAP property. The application must be signed by the Group Leader and include the leader's address and telephone number. The enrollment fee must also accompany the application. If the applicant chooses to contract with a private wildlife biologist, the name of the biologist and his/her company must be included on the application.
- (3) Agreements
- (a) A TWRA biologist will contact and schedule a meeting with the DMAP Group Leader prior to July 1, or, if circumstances dictate, this date may be extended as determined by TWRA. At this meeting the Group Leader will discuss his/her deer management goals with the biologist. The biologist will discuss appropriate habitat and population management strategies to achieve the desired goals. If the participant agrees with these strategies, the Group Leader will sign an agreement with TWRA stating that the participant will abide by the terms and conditions of both the agreement and the management plan developed by the biologist. Once the agreement is signed by the Group Leader, the enrollment fees are non-refundable. If the DMAP participant chooses to contract with a private wildlife biologist, the deer management plan developed by the private biologist must be submitted to TWRA for approval or be postmarked by July 1.
  - (b) Management plans developed by private wildlife biologists must be approved by TWRA before an agreement can be signed. If the plan developed by the private wildlife biologist is determined to be unacceptable by TWRA, and mutual revision of the plan cannot be agreed upon, the participant is denied entry into the DMAP.
- (4) Additional Requirements
- (a) The participant must collect harvest and observational data as specified by the biologist and the management plan.
  - (b) The participant must make a good faith effort, as determined by TWRA, to complete all jobs and duties specified in the management plan.
  - (c) The participant may be removed from the DMAP and the property will may be rendered ineligible for reentry into DMAP for a maximum of two years if any of the hunt participants are convicted of a violation any wildlife laws.
  - (d) Property and hunting records of the participants in the DMAP will be open to inspection by any TWRA official with no advance notice.
  - (e) If an existing DMAP participant is removed from the DMAP by the Agency for any reason, then the hunt club may request a meeting with the TWRA executive director, or his designee, who may determine whether or not removal is appropriate. The decision of the TWRA executive director, or his designee, is final.

## (5) Permit Issuance

- (a) A population management plan with harvest recommendations for a participant can be completed by the Agency biologist as soon as the biologist obtains appropriate information, specifically deer harvest and observational data, which will be used to formulate recommendations. Harvest recommendations concerning the antlerless segment of the deer herd cannot be established until analysis of the appropriate data. Therefore the Agency biologist will not issue antlerless permits to the DMAP participant until the appropriate data is collected for at least one year. If a hunt club has accurate data, including the harvest for the previous deer hunting season, the biologist can make specific antlerless harvest recommendations during the first year of the program.
- (b) TWRA will establish an antlerless harvest quota for the property. All antlerless deer harvested on the property by DMAP participants and other hunters during the muzzleloader and gun seasons will count toward the quota.
- (c) Each individual specified on the Deer Management Assistance Permit application form submitted by the Group Leader must purchase in his or her name, and possess while hunting, a DMAP Antlerless Quota Permit. The Deer Management Assistance Permit application must be received by the TWRA Quota Hunts Section or be postmarked by October 1, and must include the names, addresses, and TWRA license identification numbers and all other requested information of all participating hunters, along with payments for each hunter's DMAP Antlerless Quota Permit. Payments will not be required for those hunters possessing a valid Annual or Lifetime Sportsmans License or an Annual Senior Citizen Permit. Permits will be valid for hunting antlerless deer anytime during the deer muzzleloader and gun seasons. Individual permits will be valid for any number of antlerless deer not to exceed the number of remaining antlerless deer needed to reach the DMAP participant quota. When the quota for a DMAP property is reached, all DMAP Antlerless Quota Permits shall be considered null and void.
- (d) The Group Leader must report to its hunt club members the antlerless harvest quota status immediately before start of the muzzleloader and gun seasons. Additionally, the Group Leader must inform TWRA and its hunt club members immediately when the antlerless harvest quota has been reached. Each DMAP Group Leader will be issued an allotment of deer kill tags to facilitate record keeping and account for each deer harvested on the property. All kill tags (blank and completed) must be kept in a central location that can be accessed at anytime by TWRA officials. The Group Leader will be responsible for all kill tags issued and must return all tags to TWRA within 5 days of the close of deer gun season.

## (6) Other Requirements or Conditions

- (a) The provisions contained within this rule are intended to be general guidelines for implementation of the deer management assistance program and are not intended to include all requirements or conditions that may be imposed upon participants. Other requirements or conditions are permitted as needed and as determined by TWRA in order to insure the statutory purposes for deer management assistant agreements are carried out.

**Authority:** T.C.A. §§70-1-206 and 70-1-302.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of November, 2002. (11-28)

## **WILDLIFE PROCLAMATIONS**

### **TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

#### **PROCLAMATION 02-17 REGULATING SPRING WILD TURKEY HUNTING SEASONS AND BAG LIMITS**

Pursuant to the authority granted by Tennessee Codes Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following spring hunting seasons and bag limits for wild turkey hunting effective March 1, 2003.

#### **SECTION I. GENERAL REGULATIONS**

##### **A. Prohibited Acts**

Use of electronic calls or live decoy. Possession of agricultural grain on one's person while turkey hunting. The use of any type of food to feed or attract wild turkeys on WMAs. Shooting or stalking turkeys from a boat in Shelby, Dyer, Tipton, Lauderdale, Haywood or Obion counties. Calling or attempting to call wild turkeys using any call to mimic the sounds made by a wild turkey is prohibited from March 1st to the opening day of the spring turkey hunts on all Wildlife Management Areas. A licensed turkey hunter, who has filled his bag limit, or does not possess a valid permit for a quota hunt may accompany another turkey hunter who has a valid permit (except on Oak Ridge WMA) and assist him in calling, but may not have a gun or bow in his possession.

##### **B. Bag and Possession Limits \***

Statewide - One bearded turkey per day, not to exceed three per season,  
(Includes turkeys taken on WMAs listed in Section III. D. below)

Wildlife Management Areas (Except those WMAs listed in Section III. D)  
One bearded turkey per hunt not to exceed two per season.

\* The total bag and possession limit shall not exceed four bearded turkeys per season on the statewide season and WMAs combined. Turkeys taken on Ft. Campbell, Chickasaw NWR, Lower Hatchie NWR, Reelfoot NWR and youth-only hunts are bonus birds and do not count toward the total season bag and possession limit.

##### **C. Shooting Hours - Thirty (30) minutes before sunrise to sunset**

D. Checking Stations - All hunters must check in at the area checking station prior to hunting on AEDC, J.M. Tully, Catoosa, Cheatham, Chuck Swan, Laurel Hill, LBL, Natchez Trace, Prentice Cooper, Reelfoot and Shelby Forest Wildlife Management Areas. Hunters are also required to check out at the conclusion of their hunt. All turkeys harvested on the statewide hunt or on WMAs must be taken by the most reasonably

direct route to the nearest county or WMA check station on the day harvested. The permanent kill tag required for the legal possession will be issued at the checking station.

## **SECTION II. STATEWIDE TURKEY HUNTING SEASONS AND BAG LIMITS**

(Exclusive of WMAs unless listed in Section III.D below)

- A. Counties Open - All counties of the state are open
- B. Statewide Turkey Season Dates – March 29 through May 6, 2003
- C. Statewide Youth - Only Hunt (ages 10 through 16) - May 10, 2003

Each youth must be accompanied by a non-hunting adult who is not required to have a license. Bag limit - one bearded bird

## **SECTION III. WILDLIFE MANAGEMENT AREAS - SEASONS AND MISCELLANEOUS REGULATIONS**

- A. Regular Managed Hunts (No Quota) Bag Limit - One bearded turkey per hunt not to exceed two turkeys per spring season. (See Section I.B.)

AEDC	Four hunts: March 29-31, April 4-6, 11-13, 25-27. (TNG training area is closed during the April 11-13 hunt)
J. M. Tully	One 1-day Youth-only hunt: May 10.
Catoosa	Six 3-day hunts: April 4-6, 11-13, 15-17, 22-24, 25-27, April 29- May 1. One 2-day Youth-only hunt April 19-20.
Cheatham	Four hunts: March 29-31, April 12-15, 17-20, 25-27. One 1-day Youth-only hunt: April 5.
Ernest Rice	One 1-day Youth-only hunt: May 10.
Fall Creek Falls	Two hunts: April 5-9, 10-13 (Archery Only).
Laurel Hill	Four hunts: March 29-31, April 4-6, 12-15, 17-20.
LBL hunt on the	Two 7-day hunts: April 14-20 and April 21-27 Hunters harvesting a turkey on a LBL quota hunt (Sect. III.B) may not April 14-20 hunt.
Natchez Trace	One 2-day hunt: April 24-25.
Moss Island	One 1-day Youth-only hunt: May 10.
Prentice Cooper	Six 3-day hunts: April 1-3, 4-6, 8-10, 17-19, 22-24, 25-27.

- Shelby Forest and Eagle Lake Refuge One 1-day Youth-only hunt: May 10.
- Williamsport Two 3-day hunts: March 29-31, April 11-13.
- Wolf River One 1-day Youth-only hunt: May 10.
- B. Quota Managed Hunts (Quota turkey permit required) Bag Limit-One bearded turkey per hunt not to exceed two per spring season (See Sect. I.B.)
- J. M. Tully Two 3-day hunts: April 11-13 , 25-27 (50 hunters per hunt)
- Chuck Swan Six 3-day hunts: March 27-29, April 3-5, 10-12, 17-19, 24-26  
May 1-3. (125 hunter quota per hunt). Hunting ends at noon each day,  
hunters must be at check station by 1pm
- Ernest Rice One 2-day hunt: April 19-20. (30 hunter quota)
- LBL Two 2-day hunts: April 8-9, 12-13 (350 quota per hunt)  
One 2-day Youth-only hunt: April 5-6 (300 hunter quota)
- Moss Island One 2-day hunt: April 19-20. (30 hunter quota)
- Natchez Trace Three 3-day hunts: April 4-6, 11-13, 18-20. 96 hunter quota per hunt  
(48 south of I-40 only and 48 north of I-40 only). Hunters must sign in  
and out each day they hunt.
- Oak Ridge Two 2-day hunts: April 5-6, 12-13  
(100 hunter quota per hunt). Hunting ends at 2 p.m. daily, successful  
hunters must be at check station by 3 p.m.  
Scouting date for permit holders only March 22 (6am to 2 pm)  
Hunts subject to cancellation for National security.  
Hunting area may be reduced.
- Reelfoot WMA and Black Bayou Refuge One 3-day hunt: April 11-13 (20 Hunter quota)
- Shelby Forest and Eagle Lake Refuge Three 1-day hunts: April 12, 19, 26 (50 hunter quota per hunt)
- Wolf River Two 3-day hunts: April 4-6 (25 hunter quota) and  
April 11-13 (30 hunter quota).  
Hunting ends at noon each day and successful hunters must check birds  
at Wolf River Check Station by 1pm
- Yuchi Refuge (at Smith Bend) Five three-day hunts: April 4-6, 11-13, 18-20, 22-24,  
April 29-May 1 (10 hunter quota per hunt). Hunting ends at Noon EST.  
Walk-in Only. No Access by Boat.
- C. Special Managed Hunts (No Quota)

- |  |   |
|--|---|
| Cordell Hull (Wheel Chair Bound Only Hunting Zone) * | March 29- May 6 Wheel chair bound hunters only<br>Bag limit - two turkeys either-sex per season   |
| South Cherokee* * and Foothills                      | March 29 - May 6 (Non-quota permit required)<br>Bag limit - one bearded turkey per day not to exceed 2 per season. Turkey counts in WMA bag limit.<br><br>May 10, 2003 - Youth-only (age 10 through 16) hunt to coincide with the statewide youth hunt. Bag limit is one bearded bird and counts as a statewide bird. |
- \* Wheel Chair Only Hunting Zone – That portion of Cordell Hull WMA known as the Old Roaring River Campground (as posted)
- \*\* South Cherokee – portions of Cherokee Forest WMA south of Great Smoky Mtns. National Park

D. Wildlife Management Areas Open With Statewide Seasons and Bag Limits:

Alpine Mtn., Bark Camp Barrens, Barkley (Units I and II), Bean Switch Refuge, Big Sandy, (including Gin Creek), Bridgestone/Firestone, Camden (Units I and II), Cedar Hill Swamp, Chickamauga, Chickasaw, Cheatham Lake, Cold Creek Refuge, Cordell Hull, Cordell Hull Refuge, Cove Creek, Cumberland Forest, Cumberland Springs, Cypress Pond Refuge, Doe Mtn, Eagle Creek, Edgar Evins State Park, Flintville Hatchery, Gooch, Harmon's Creek, Haynes Bottom, Hop-in Refuge, Horns Bluff Refuge, Jarrell Switch, Jackson Swamp, Keyes-Harrison, Lick Creek, Lick Creek Bottoms, Maness Swamp Refuge, MTSU, Mt. Roosevelt, New Hope, Normandy, Obion River, Old Hickory (including Lock 5 Refuge), Pea Ridge, Percy Priest Unit I (archery only) and Unit II, Pickett, Royal Blue, Standing Stone, West Sandy, Tellico Lake (except McGhee-Carson and Niles Ferry Units), Tigrett, Watts Bar, White Lake Refuge, White Oak, Yanahli and portions of the Cherokee Forest WMA north of the Great Smoky Mtns. National Park are open to coincide with the statewide seasons and bag limits.

**SECTION IV. NATIONAL WILDLIFE REFUGE HUNTS - FEDERAL PERMIT REQUIRED BAG LIMIT – ONE BEARDED TURKEY PER SEASON (COUNTS AS A BONUS BIRD UNLESS OTHERWISE NOTED).**

- |                                    |  |
|------------------------------------|--|
| Chickasaw NWR                      | Three 5- day hunts: April 9-13, 16-20, 23-27<br>(50 hunter quota per hunt)   |
| Lower Hatchie NWR                  | Three 5- day hunts: April 9-13, 16-20, 23-27<br>(25 hunter quota per hunt)   |
| Upper Hatchie NWR                  | One 17-day hunt: April 11-27 (counts in statewide bag)   |
| Tennessee NWR and Cross Creeks NWR | March 29 - May 6. (counts in statewide bag)<br>May 10th - a Youth-only (age 10 through 16) hunt to coincide with the statewide youth hunt and bag limit. |

Reelfoot NWR

One three-day hunt April 11-13.

Hunter quota: Grassy Lake - 25, Long Point - 25.

**SECTION IV. REPEAL OF PRIOR PROCLAMATIONS**

This proclamation repeals Proclamation 01-24 dated Dec. 7, 2001.

Proclamation No. 02-17 received and recorded this 15th day of November, 2002. (11-12)

Blank

pg. 90



## CERTIFICATE OF APPROVAL

*As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning November 1, 2002 and ending November 29, 2002.*

  
RILEY C. DARNELL  
*Secretary of State*

Blank

pg. 92

## CHANGE OF ADDRESS

If your address has changed, please supply the following information immediately:

- official compilation - Rules and Regulations of the State of Tennessee*
- Tennessee Administrative Register*

### *Former Address*

---

*name of firm or organization*

---

*street or box number and street or rural route*

---

*city*

*state*

*zip code*

### *New Address*

---

*name of firm or organization*

(      )

---

*name of person to receive publication*

*telephone number*

---

*street or box number and street or rural route*

---

*city*

*state*

*zip code*

### ***Mail This Form To:***

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



Blank

pg. 94

## ORDER FORM

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

- New Subscription:** *official compilation – Rules and Regulations of the State of Tennessee.* The multi-volume compilation is \$ 950.00, which includes monthly replacement pages and the *Tennessee Administrative Register* for the first year.
- Renewal:** *official compilation – Rules and Regulations of the State of Tennessee.* After one year the compilation subscription is renewable for \$ 150.00 per year. The renewal includes monthly replacement pages for the compilation and the *Tennessee Administrative Register*.
- New Subscription:** *Tennessee Administrative Register (T.A.R.).* The T.A.R., a monthly publication containing notices of rulemaking hearings as well as emergency, proposed and public necessity rules, is available for \$ 50.00 per year. This does not include replacement pages for the compilation.

---

*name of firm or organization*

(      )

---

*name of person to receive publication*

*telephone number*

---

*street address*

---

*city*

*state*

*zip code*

***Mail This Form To:***

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

