

TAAAR



January 15, 2003
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RILEY C. DARNELL
Secretary of State

Division of Publications
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312 8th Avenue North
Nashville TN 37243 - 0310

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Department of State, Authorization No. 305197, 375 copies, January 2003. This public document was promulgated at a cost of \$ 4.20 per copy.

PREFACE

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

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

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

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

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

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

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

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

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

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ANNOUNCEMENTS

THE TENNESSEE DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF ANIMAL INDUSTRIES

CHAPTER 0080-2-1 HEALTH REQUIREMENTS FOR ADMISSION AND TRANSPORTATION OF LIVESTOCK AND POULTRY

CORRECTION

Correction: In the July 2002 Tennessee Administrative Register, the rule filing for 0080-2-1 (06-39), filed June 28, 2002, was listed with an effective date of December 10, 2002. The effective date should have been October 28, 2002.

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%.

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.

Fred R. Lawson
Commissioner

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 February 2003 is 8.90 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 calculated rate is 4.90 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.

Fred R. Lawson
Commissioner

**THE GOVERNMENT OPERATIONS COMMITTEE
THE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620**

NOTICE OF STAY OF EFFECTIVE DATE

Please be advised that pursuant to Tennessee Code Annotated, Section 4-5-215(b), the House Government Operations Committee voted to stay for sixty (60) days the effectiveness of the following rules:

Tennessee Department of Finance and Administration

Bureau of TennCare
TennCare Medicaid
Rule Chapter 1200-13-13

TennCare Standard
Rule Chapter 1200-13-14

These rules were filed on September 30, 2002 and would have become effective December 14, 2002.

This notice of stay of effective dates was filed in the Secretary of State's Office on the 9th day of December, 2002. The new effective date for these rule filings is February 12, 2002. (12-02)

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 December 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.

ANNOUNCEMENTS

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SEQ	FILE DATE	DEPT. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-01	Dec 2, 2002	1240 Human Services Administrative Services Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 1240-9-1 Access to Public Records of the Department of Human Services</i> 1240-9-1-.01 Purpose and Scope 1240-9-1-.02 Definitions 1240-9-1-.03 Requests for Access to Records 1240-9-1-.04 Requests for Reproduction of Records 1240-9-1-.05 Fees and Costs for Reproduction of Records 1240-9-1-.06 Payment for Records 1240-9-1-.07 Waiver of Fees	Lee Anne Bruce Deputy General Counsel Citizens Plaza Building, 15 th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731	Feb 15, 2003
12-02	Dec 9, 2002	0620 Finance and Administration Bureau of TennCare	GOC Stay		Chapter 1200-13-13 TennCare Medicaid Chapter 1200-13-14 TennCare Standard Originally filed Sept 30, 2002; effective Dec 14, 2002.	Fred Standbrook Suite G-3 WMB Nashville Tn 37243-0059 741-3074	New effective date: Feb 12, 2003
12-06	Dec 11, 2002	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	Amendments	Chapter 1240-1-2 Family Assistance Unit 1240-1-2-.02 Household Concept - Food Stamps Only	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	Feb 24, 2003
12-07	Dec 11, 2002	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	Amendments	Chapter 1240-1-2 Family Assistance Unit Food Stamp Program 1240-1-2-.02 Household Concept - Food Stamps Only Chapter 1240-1-4 Financial Eligibility Requirements 1240-1-4-.27 Standard Of Need/Income	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	Feb 24, 2003
12-08	Dec 11, 2002	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-1-46 Family Assistance Unit Families First Program</i> 1240-1-46-.02 Filing Unit and Assistance Group	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	Feb 24, 2003
12-09	Dec 13, 2002	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-1-49 Families First Employment And Training</i> 1240-1-49-.04 Failure To Comply, Conciliation, Good Cause, And Sanctions	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	Feb 26, 2003

SEQ	FILE DATE	DEPT. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-09, cont.					1240-1-49-.06 Voluntary Quit 1240-1-49-.08 Department Of Health Visits <i>Chapter 1240-1-50</i> Standard of Need/Income 1240-1-50-.20 Standard of Need/Income <i>Chapter 1240-1-51</i> Periods of Eligibility 1240-1-51-.01 Eligibility For Families First - Time Limits	George Woods 729 Church St. Nashville TN 37247- 6501 615-741-0145	Dec 13, 2002 through May 27, 2003
12-10	Dec 13, 2002	0620 Finance and Administration Bureau of TennCare	Emergency Rules	New Rules	<i>Chapter 1200-13-13</i> <i>TennCare Medicaid</i>	George Woods 729 Church St. Nashville TN 37247- 6501 615-741-0145	Dec 13, 2002 through May 27, 2003
12-11	Dec 13, 2002	0620 Finance and Administration Bureau of TennCare	Emergency Rules	New Rules	<i>Chapter 1200-13-14</i> <i>TennCare Standard</i>	George Woods 729 Church St. Nashville TN 37247- 6501 615-741-0145	Dec 13, 2002 through May 27, 2003
12-12	Dec 16, 2002	1155 Board of Registration in Podiatry	Rulemaking Hearing Rules	Amendment	<i>Chapter 1155-2</i> <i>General Rules and Regulations Governing the</i> <i>Practice of Podiatry</i> 1155-2-.06, Fees	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247- 0120 615-741-1611	Mar 1, 2003
12-14	Dec 18, 2002	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-18</i> <i>Rules and Regulations of Live Wildlife</i> 1660-1-18-.03 Classes of Wildlife	Sheryl Holtam, Staff Attorney TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	Mar 3, 2003
12-15	Dec 18, 2002	0940 Mental Health and Developmental Disabilities Mental Health Services	Rulemaking Hearing Rules	New Chapter	<i>Chapter 0940-5-33</i> <i>Mental Health Partial Hospitalization Programs</i>	Cynthia Clark Tyler Mental Health and Developmental Disabilities 26th Fl, TN Twr 312 8th Ave N Nashville, TN 37243 (615) 532-6518	Mar 3, 2003
12-16	Dec 18, 2002	Developmental Disabilities Mental Health Services	Rulemaking Hearing Rules	New Chapter	<i>Chapter 0940-5-34</i> <i>Mental Health Vocational Programs</i>	Cynthia Clark Tyler 26th Fl, TN Twr Nashville, TN 37243 (615) 532-6518	Mar 3, 2003

ANNOUNCEMENTS

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SEQ	FILE DATE	DEPT. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-17	Dec 19, 2002	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-1-5 Pupil Transportation</i> 0520-1-5-.01 Operation of School Buses	Karen Weeks State Board of Education 9th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 (615) 532-3528	April 30, 2003
12-18	Dec 19, 2002	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-2-3 Teacher Education and Licensure</i> 0520-2-3-.01 Licensure, General Requirements	Karen Weeks State Board of Education 9th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 (615) 532-3528	April 30, 2003
12-19	Dec 19, 2002	0520 Board of Education	Proposed Rule	Amendments	<i>Chapter 0520-7-2 Non-public School Approval Process</i> 0520-7-2-.01 Categories	Karen Weeks State Board of Education 9th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN, 37243-1050 (615) 532-3528	April 30, 2003
12-20	Dec 30, 2002	0780 Commerce and Insurance Division of Insurance	Public Necessity Rules	New rules	<i>Chapter 0780-1-74 Pre-Licensing Education and Examination Requirements for Insurance Producers</i> 0780-1-74-.01 Pre-licensing Education Requirements 0780-1-74-.02 Examination Requirements 0780-1-74-.03 Agents for Health Maintenance Organizations	John F. Morris Commerce and Insurance 25 th Fl TN Twr 312 8th Ave N Nashville, TN 37243 615-741-2199	December 30, through June 13, 2003
12-22	Dec 30, 2002	0400 Environment and Conservation Water Supply	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-5-1 Public Water Systems</i> 1200-5-1-.04 Definitions 1200-5-1-.17 Operation and Maintenance Requirements 1200-5-1-.19 Notification of Customers 1200-5-1-.31 Filtration and Disinfection	Alan Lieserson OGC TN Twrs 312 8 th Ave N Nashville TN 37243-1548 615-532-0125	Mar 15, 2003

SEQ	FILE DATE	DEPT. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-23	Dec 30, 2002	1640 Tennessee Student Assistance Corporation	Proposed Rules	Amendment	Chapter 1640-1-14 Dependent Children Scholarship 1640-1-14-.03 Application and Award Procedures	Richard G. Rhoda TSAC Suite 1950, Pkwy Twrs 404 James Robertson Pkwy Nashville, TN 37243 (615) 741-1346	April 30, 2003
12-25	Dec 30, 2002	0940 Mental Health and Developmental Disabilities Mental Health Services	Rulemaking Hearing Rules	Amendments	Chapter 0940-5-15 (Minimum Program Requirements for Mental Health Adult Day Treatment Services) 0940-5-15-.01 Definition 0940-5-15-.02 Application of Rules for Mental Health Adult Day Treatment Services 0940-5-15-.03 Personnel Requirements For Adult Day Treatment Services 0940-5-15-.04 Assessment Requirements For Adult Day Treatment Services 0940-5-15-.05 Plan Of Care Requirements For Adult Day Treatment Services 0940-5-15-.06 Record Requirements In Adult Day Treatment Services 0940-5-15-.07 Environmental Requirements For Adult Day Treatment Services 0940-5-15-.08 Medication Administration In Adult Day Treatment Services	Marthagem Whitlock Deputy Assistant Commissioner Mental Health Services 3rd Fl Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Mar 15, 2003
12-26	Dec 30, 2002	0940 Mental Health and Developmental Disabilities Mental Health Services	Rulemaking Hearing Rules	Amendments	Chapter 0940-5-17 Minimum Program Requirements for Mental Health Adult Residential Treatment Services 0940-5-17-.01 Definition 0940-5-17-.02 Application of Rules for Mental Health Residential Treatment Program 0940-5-17-.03 Personnel And Staffing Requirements For Residential Treatment Program 0940-5-17-.04 Other Services 0940-5-17-.05 Emergency Services 0940-5-17-.06 Individual Record Requirements For Residential Treatment Programs	Marthagem Whitlock Deputy Assistant Commissioner Mental Health Services 3rd Fl Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Mar 15, 2003

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-26, cont.					0940-5-17-.07 Assessment Requirements For Residential Treatment Programs 0940-5-17-.08 Plan Of Care Requirements For Residential Treatment Programs 0940-5-17-.09 Management Of Disruptive Behavior 0940-5-17-.10 Service Recipient Rights In Residential Treatment Programs 0940-5-17-.11 Medication Administration In Residential Treatment Programs 0940-5-17-.12 Recreational Activities In Residential Treatment Programs 0940-5-17-.13 Health, Hygiene, And Grooming In Residential Treatment Programs		
12-27	Dec 30, 2002	0940 Mental Health and Developmental Disabilities Mental Health Services	Rulemaking Hearing Rules	Amendments	Chapter 0940-5-29 <i>Minimum Program Requirements for Mental Health Psychosocial Rehabilitation Program Facilities</i> 0940-5-29-.01 Definition 0940-5-29-.02 Application of Rules for Mental Health Psychosocial Rehabilitation Program 0940-5-29-.03 Policies and Procedures for Mental Health Psychosocial Program Service Requirements for Psychosocial Program 0940-5-29-.05 Personnel Requirements 0940-5-29-.06 Individual Assessment Requirements 0940-5-29-.07 Individual Plan of Care Requirements 0940-5-29-.08 Individual Record Requirements 0940-5-29-.09 Additional Environmental Requirements	Marthagem Whitlock Deputy Assistant Commissioner Mental Health Services 3rd Fl Cordell Hull Bldg Nashville, TN 37243 (615) 532-6744	Mar 15, 2003

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

Applications will be heard at the February 26, 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 December 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
Mid-South Birth and Women's Center 4655 & 14675 Hwy. 194 Oakland (Fayette Co.), TN 38060 Jennifer James – (901)—752-8883 Cn0208-066	The establishment of a birthing center. \$ 188,000.00
Surgery Center of Columbia Not assigned Columbia (Maury Co.), TN 38401 Kim Looney – (615)—259-1450 CN0210-106	The replacement of the Surgery Center of Columbia's existing ambulatory surgical treatment center (ASTC) at 1405 Hatcher Lane in Columbia, Tennessee with a newly constructed facility. The replacement facility will be located behind the existing ASTC in a location that borders Rosewood and Alpine Drives. The number of operating rooms (2) and procedure rooms (3) will not change. \$ 2,167,524.00
SouthEast Eye Specialists, P.C. 1949 Gunbarrel Road, Suite 220 Chattanooga (Hamilton Co.), TN 37421 Byron R. Trauger – (615)—256-8585 CN0211-107	The establishment of a single specialty ambulatory surgical treatment center (ASTC) and the initiation of outpatient ophthalmic surgery services at 1949 Gunbarrel Road, Suite 220 in Chattanooga, Tennessee. \$ 1,205,052.00

NAME AND ADDRESS	DESCRIPTION
Baptist Plaza Surgicare 2011 Church Street Nashville (Davidson Co.), TN 37236 Noel D. Falls – (251)—929-1003 CN0211-108	The establishment of a seven (7) operating room multi-specialty ambulatory surgical treatment center (ASTC) located in Baptist Plaza which is adjacent to Baptist Hospital. The facility will be located in existing operating room space currently owned and operated by Baptist Hospital. Baptist Plaza Surgicare’s address will be 2011 Church Street in Nashville, Tennessee. \$ 8,575,170.00
St. Mary’s Medical Center of Campbell County, Inc. 923 East Central Avenue LaFollette (Knox Co.), TN 37766 David Lewis – (865)—545-7547 CN0211-109	The initiation of mobile Magnetic Resonance Imaging “MRI” services. St. Mary’s Medical Center of Campbell County, Inc. will provide the mobile MRI two (2) days a week under arrangement with St. Mary’s Health System, Inc. and Shared Imaging, Inc. The MRI will be located at 923 E. Central Avenue in LaFollette, Tennessee. \$ 863,000.00
UT Endoscopy Center West1 1455 Parkside Drive Knoxville (Knox Co.), TN 37922 Gary Thomas – (865)—544-6646 CN0211-110	The initiation of satellite endoscopic services. The project will include two procedure rooms and will be operated under the existing license of UT Medical Center. The hospital outpatient endoscopic services will be located in a multi-tenant medical office building to be constructed at 11455 Parkside Drive in Knoxville, Tennessee. \$ 2,212,019.00
Henry County Orthopaedic Outpatient Surgery Center, Inc. 1015 Kelly Drive Paris (Henry Co.), TN 38242 Graham Baker – (615)—383-3332 CN0211-111	The establishment of a single specialty, two (2) operating room ambulatory surgical treatment center (ASTC) and the initiation of outpatient surgery services limited to orthopaedic procedures at 1015 Kelly Drive in Paris, Tennessee. \$ 1,158,845.00
Endoscopy Center of the Mid-South, LLC 3960 Knight Arnold Memphis (Shelby Co.), TN 38118 Craig B. Watson – (901)—369-8501 CN0211-112	The establishment of a single specialty ambulatory surgical treatment center (ASTC) with one (1) procedure room and the initiation of outpatient endoscopy surgery at 3960 Knight Arnold Road in Memphis, Tennessee. \$ 313,830.00
Chattanooga Imaging Corner of Hamill Road and Bradington Road Hixson (Hamilton Co.), TN 37405 William H. West – (615)—259-1450 CN0211-113	The initiation of an in-office magnetic resonance imaging (MRI) services and the acquisition of MRI equipment to be located at the corner of Hamill Road and Bradington Road in Hixson, Tennessee. \$ 1,889,785.00

NAME AND ADDRESS

DESCRIPTION

Williamson Medical Center
2021 Carothers Road
Franklin (Williamson Co.), TN
Graham Baker – (615)—383-3332
CN0211-115

The addition of forty (40) beds to be located in a sixth floor addition. The project also includes the renovation of the third and fourth floors and the reconfiguration of outpatient areas at Williamson Medical Center, 2021 Carothers Road in Franklin, Tennessee.
\$ 10,500,000.00

Premier Orthopaedic Surgery Center, LLC
394 Harding Place
Nashville (Davidson Co.), TN 37211
Edwin Day – (615)—952-2297
CN0211-116

The establishment of a two (2) operating room ambulatory surgical treatment (ASTC) and the initiation of outpatient surgery services at 394 Harding Place in Nashville, Tennessee.
\$ 3,531,660.00

Cleveland Community Hospita
12800 Westside Drive
Cleveland (Bradley Co.), TN 37312
Jerry W. Taylor – (615)—726-1200
CN0211-117

The initiation of cardiac catheterization services at Cleveland Community Hospital located at 2800 Westside Drive in Cleveland, Tennessee.
\$ 675,803.20

Tennessee PET Scan Center, LLC
2018 Murphy Avenue
Nashville (Davidson Co.), TN 37203
William H. West – (615)—259-1450
CN0211-118

The establishment of an outpatient diagnostic center, the initiation of positron emission tomography (PET) services, and the acquisition of a PET Scanner to be located at 2018 Murphy Avenue in Nashville, Tennessee.
\$ 1,803,725.00

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)
- 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)

**THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. § 4-5-208, I am promulgating emergency rules setting forth the operational parameters of the TennCare Medicaid Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights.

I have made a finding that there is an emergency creating an immediate threat to the public health, safety and welfare and the nature of this danger is such that the use of any other form of rulemaking authorized by the Tennessee Uniform Administrative Procedures Act will not adequately protect the public. Absent an emergency rule, there will be no guidelines governing the operation of the TennCare Medicaid Program to assure that the program provides the services approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") to the appropriate Tennessee residents. TennCare Medicaid is one of two distinct programs created by the new modified TennCare Demonstration Project under Section 1115 of the Social Security Act. This new waiver was approved by CMS effective July 1, 2002 through June 30, 2007.

This need for urgent action by the Department of Finance and Administration, Bureau of TennCare has been necessitated by the action taken by the House Government Operations Committee on December 9, 2002. Pursuant to T.C.A. § 4-5-215(b), the House GOC stayed for sixty (60) days the effectiveness of the Rulemaking Hearing Rules, Chapter 1200-13-13, TennCare Medicaid, duly promulgated by the Bureau, approved by the Attorney General, and filed with the Secretary of State on September 30, 2002, scheduled to become effective December 14, 2002. Absent this emergency action, there will be no mechanism to administer the TennCare Medicaid Program, including enrollment and the provision of services.

Therefore, the Department of Finance and Administration, Bureau of TennCare hereby proceeds without prior notice or hearing to adopt this emergency rule.

For a copy of this emergency rule, contact George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone (615) 741-0145.

Manny Martins
Deputy Commissioner
Tennessee Department of Finance and
Administration

**SUMMARY
OF
EMERGENCY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

CHAPTER 1200-13-13
TENNCARE MEDICAID**

Eligibility

The Technical and financial eligibility requirement for TennCare Medicaid are as follows:

- (a) To be eligible for TennCare Medicaid, individuals must:
1. Meet all technical requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3-.03 of the rules of the TDHS – Division of Medical Assistance, and all financial eligibility requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3-.03 of the rules of the TDHS – Division of Medical Assistance; or
 2. Meet the financial eligibility requirements of the SSI Program of the Social Security Administration and be approved for SSI benefits by the Social Security Administration; or
 3. Be a woman who is under age sixty-five (65), is uninsured, is not eligible for Medicaid under any other category, is a U.S. citizen or qualified alien, and has been diagnosed by a screening at a Centers for Disease Control and Prevention (CDCP) site with breast or cervical cancer, including pre-cancerous conditions.
- (b) The Bureau of TennCare will also have access to third party resources on current TennCare Medicaid eligibles. MCCs will release insurance information from their files to the Bureau of TennCare on a regular basis, as required in the contract between the MCCs and the Tennessee Department of Finance and Administration.
- (c) Eligibility for TennCare Medicaid is limited to individuals who meet the following criteria:
1. Tennessee residents who are eligible for Medicaid as defined in rule 1200-3-3 of the TDHS – Division of Medical Assistance;
 - (i) Individuals enrolled as categorically needy, as defined at 1200-13-13-.01 of these rules, will be eligible for TennCare Medicaid for a period determined by their eligibility category.
 - (ii) Individuals enrolled as medically needy, as defined at 1200-13-13-.01 of these rules, will be eligible for a period of one (1) year regardless of his/her Medicaid eligibility period.
 - (iii) TennCare Medicaid enrollees in Parts 1. And 2. above, must be recertified for TennCare Medicaid prior to the expiration of their eligibility and qualify to remain in TennCare Medicaid, or apply for and be approved for TennCare Standard in order to maintain their benefits in the TennCare Program without a break in coverage.

2. Tennessee residents who are determined eligible for the SSI Program by the Social Security Administration.
 3. Women who have been enrolled as a result of needing treatment for breast or cervical cancer and who meet the technical and financial requirements found at 1200-13-13-.02 of these rules will be enrolled for a period of one (1) year. Prior to the expiration of that year, she will be asked to recertify her, and her family's if appropriate, address, monthly income, and access to health insurance in order to continue to participate in the TennCare Medicaid Program.
- (b) Effective date of eligibility
1. For SSI eligibles, the date determined by the Social Security Administration in approving the individual for SSI coverage.
 2. For all other Medicaid eligibles, the date of the application or the date of the qualifying event (such as the date that a spend-down obligation is met), whichever is later.
 4. For persons applying for Medicaid eligibility during a period when the DHS offices are not open, the date their faxed application is received at DHS, but only when the faxed application is followed up on the next business day with a complete application at DHS.

Enrollment

Persons determined eligible for TennCare Medicaid by the TDHS or the Social Security Administration, as eligible for SSI benefits, are subject to the following requirements:

- (a) Individuals who are approved for TennCare Medicaid by the TDHS or the Social Security Administration (for SSI benefits) shall be allowed to enroll in TennCare Medicaid at any time throughout the year.
- (b) TennCare Medicaid enrollees will have a forty-five (45) day period after initially selecting or being assigned to a health plan to change plans. No additional changes will be allowed except as otherwise specified in these rules.
- (c) If an individual is approved for TennCare Medicaid and has another family member already enrolled in the TennCare Program, that individual shall be placed in the same health plan as the currently enrolled family member. To the extent possible, all identifiable family members shall be placed in the same health plan. The exception will be any family members assigned to TennCare Select by the Bureau of TennCare. If the newly enrolled family member opts to change MCOs during the 45-day change period as stated in (b) above, all family members on the case will be transferred to the new MCO.
- (d) Enrollees in TennCare Medicaid shall be given their choice of health plans when possible. If no MCO is available to enroll new members in the enrollee's region, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also elect to assign certain TennCare Medicaid children with special health needs to TennCare Select. Once the 45-day change period, as stated in (b) above expires, an individual shall remain a member of the designated plan until:

1. Recertification if he/she is TDHS-eligible for TennCare Medicaid. During the recertification process, the enrollee will be given the opportunity to change health plans if he/she chooses to do so. Enrollees who must recertify TennCare Medicaid eligibility more often than annually will only be allowed to change health plans one (1) time per twelve (12) months, except as otherwise provided for in these rules; or
2. He/she, if eligible for TennCare Medicaid as a result of being eligible for SSI benefits, is given the opportunity to change health plans annually during a period specified by the Bureau of TennCare; or
3. He/she loses eligibility to participate in the TennCare Program, whichever comes first.

However, enrollees, after going through the appeal process as described in (4)(b) below, and obtaining the approval of the Bureau of TennCare, may be permitted to change enrollment to a different health plan. In the event that an enrollee elects to change health plans, the enrollee's medical care will be the responsibility of the original health plan until enrollment in the subsequent health plan is deemed complete.

- (e) All changes in health plan assignments are subject to the requested health plan's ability and capacity to accept additional enrollees. If the requested health plan cannot accept additional enrollees, the enrollee will be assigned to another health plan, or remain in the same health plan of which he/she is a current member.
- (f) TennCare Medicaid enrollees shall be enrolled in a BHO for their mental health and substance abuse services.
- (g) TennCare Medicaid enrollees shall be accepted by an MCO regardless of their health condition at the time of enrollment.
- (h) Individuals or families determined eligible for TennCare Medicaid shall select a health plan at the time of application. Individuals enrolled as a result of being eligible for SSI benefits will be assigned to a health plan as they do not have the opportunity to select a health plan prior to their effective date of coverage. All TennCare Medicaid enrollees have a forty-five (45) day period, effective with the effective date of coverage, to request a change of health plans.
- (i) Enrollment shall be effective on the date provided to the Bureau of TennCare by the TDHS or the Social Security Administration, in accordance with these rules, and the eligible person has selected or been assigned to a health plan from those available where the person resides. In the event that an individual fails to select a health plan or the requested health plan is unable to accept additional enrollees, he/she shall be assigned to a health plan by the Bureau of TennCare.
- (j) MCOs shall offer enrollees to the extent possible, freedom of choice among providers participating in their respective health plans. If after notification of enrollment the enrollee has not chosen a primary care provider, one may be chosen for him/her by the MCO. The period during which an enrollee may choose his/her primary care provider shall not be less than fifteen (15) calendar days.

TennCare Medicaid enrollees are given their choice of health plans when possible. Once enrolled, the enrollee shall remain a member of the designated health plan until he/she is given an opportunity to change during an annual recertification period, or during a Bureau of TennCare-specific time for those who are SSI-eligible to participate in TennCare Medicaid. Only one (1) change is permitted every twelve (12) months, except where otherwise provided for in these rules.

Benefits

Benefits for TennCare Medicaid will not change until January 1, 2003. Benefits currently consist of enumerated covered medical services to be provided as medically necessary, including hospital, physician and pharmacy services as well as EPSDT (Early and Periodic Screening, Diagnosis and Treatment) services for children. The benefits package will be modified effective January 1, 2003, to provide limitations on some services and to require copayments for pharmacy services.

The emergency rules set out herein were properly filed in the Department of State on the 13th day of December, 2002 and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the day of the 27th day of May, 2003. (12-10)

THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

CHAPTER 1200-13-14 TENNCARE STANDARD

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. § 4-5-208, I am promulgating emergency rules setting forth the operational parameters of the TennCare Standard Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights.

I have made a finding that there is an emergency creating an immediate threat to the public health, safety and welfare and the nature of this danger is such that the use of any other form of rulemaking authorized by the Tennessee Uniform Administrative Procedures Act will not adequately protect the public. Absent an emergency rule, there will be no guidelines governing the operation of the TennCare Standard Program to assure that the program provides the services approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") to the appropriate Tennessee residents. TennCare Standard is one of two distinct programs created by the new modified TennCare Demonstration Project under Section 1115 of the Social Security Act. This new waiver was approved by CMS effective July 1, 2002 through June 30, 2007.

This need for urgent action by the Department of Finance and Administration, Bureau of TennCare has been necessitated by the action taken by the House Government Operations Committee on December 9, 2002. Pursuant to T.C.A. § 4-5-215(b), the House GOC stayed for sixty (60) days the effectiveness of the Rulemaking Hearing Rules, Chapter 1200-13-14, TennCare Standard, duly promulgated by the Bureau, approved by the Attorney General, and filed with the Secretary of State on September 30, 2002, scheduled to become effective December 14, 2002. Absent this emergency action, there will be no mechanism to administer the TennCare Standard Program, including enrollment and the provision of services.

Therefore, the Department of Finance and Administration, Bureau of TennCare hereby proceeds without prior notice or hearing to adopt this emergency rule.

For a copy of this emergency rule, contact George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone (615) 741-0145.

Manny Martins
Deputy Commissioner
Tennessee Department of Finance and Admin-

istration

**SUMMARY
OF
EMERGENCY RULES
OF
THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

CHAPTER 1200-13-14
TENNCARE STANDARD**

TennCare Standard is the new TennCare category for the waiver eligible population.

TennCare Standard will be offered to two groups of Tennessee residents who do not have access to group health insurance.

- Those who have incomes below 200 percent poverty; and
- Those who are “medically eligible” at any income level.

In addition, a third group will have access to pharmacy benefits only under TennCare Standard. This group will be persons enrolled in TennCare as of December 31, 2001, who have Medicare but not Medicaid, and who continue to meet the criteria for “uninsurability”

A fourth group, will be children under 19 with family incomes below 200% poverty and access to insurance who were enrolled in TennCare as of December 31, 2001. At such time as these children reach their 19th birthday and/or their family income exceeds 200% poverty, they will have to be eligible in another category in order to remain on TennCare. They will have premium and copay obligations if their family income exceeds 100% poverty.

Eligibility for TennCare Standard is limited to individuals who are not eligible for Medicaid and meet the following criteria:

- (a) Are Tennessee residents who are medically eligible and have income below one hundred (100%) percent of the poverty level;
- (b) Tennessee residents who were enrolled on the program as of June 30, 2002 as uninsured or uninsurable and who have incomes at or below the poverty level established annually based on appropriations made available by the State Legislature or have income above that level but have proven they are medically eligible in accordance with the procedures specified in these rules so long as they continue to be uninsured and lack access to group health insurance. The only exception other than that described in paragraph (d) is for uninsured children under two hundred (200%) percent of poverty who were enrolled on the program as of June 30, 2002 and have remained continuously enrolled in the program, even if they have access to

group health insurance. These enrollees must report changes in income, family size and compensation, and employment and employment status to their county TDHS office in writing within the time frame established at T.C.A. 71-5-110 for reporting changes so that a determination can be made as to access to (or lack of) employer-sponsored health insurance and the appropriate level of premium to be assessed, if any.

- (c) Tennessee residents, who were eligible for Medicare on December 31, 2001, enrolled in TennCare as an uninsured as of December 31, 2001 and who do not qualify for Medicaid, subject to proving to the Bureau that they are uninsurable. These enrollees must complete a redetermination process at the TDHS office in the county where they reside. This includes, but is not limited to, a review of access to other health insurance, (except Medicare) address, change in income, and any change in family size and composition. Enrollees who have access to other health insurance will lose their eligibility for TennCare Standard. At that time they will also be required to prove they are uninsurable the enrollee must provide a denial letter from an insurance company or its authorized agent, for which the denial is based upon the applicant's health status. TennCare will send a notice to non-Medicaid individuals who had Medicare and TennCare as an uninsured as of December 31, 2001, telling them that they must submit a letter of declination for a Medicare supplemental policy. The failure to provide proof of uninsurability will result in disenrollment from TennCare and the enrollee will no longer be eligible to apply for TennCare Standard.
- (d) Tennessee residents, who were eligible for Medicare, enrolled in TennCare as an uninsurable as of December 31, 2001, and who do not qualify for Medicaid. These enrollees must complete a redetermination process at the TDHS office in the county where they reside. This includes, but is not limited to, a review of access to other health insurance, (except Medicare) address, change in income, and any change in family size and composition. Enrollees who have access to other health insurance will lose their eligibility for TennCare Standard. However, this population will not be required to re-prove their uninsurable status.
 - 1. "Other health insurance" for the categories of eligibles described in subparagraphs (d) and (e) of this paragraph includes the following:
 - (i) A group health plan as defined in these rules;
 - (ii) Health insurance coverage, meaning benefits consisting of medical care (provided directly through insurance or reimbursement or otherwise, and including items and services paid for as medical care) under any hospital or medical services policy or certificate, hospital or medical services plan contract, or health maintenance contract offered by a health insurance issuer;
 - (iii) Medicaid;
 - (iv) Armed forces health insurance (TRICARE);
 - (v) A state health risk pool.

b. Enrollment:

Enrollment for TennCare Standard will shift to the Department of Human Services from the Department of Health. SSI beneficiaries through the Social Security Administration will be enrolled TennCare Medicaid benefits, while the SPMI/SED population, unless also eligible for Medicaid, will be enrolled in TennCare Standard. The Department of Mental Health and Developmental Disabilities will be the lead agency for establishing policy and procedural requirements and criteria for TennCare eligibility. Please also refer to the Summary of TennCare Standard above for general and technical eligibility requirements.

Enrollment for TennCare Standard ceases when:

- (a) The enrollee becomes eligible for participation in an employer-sponsored group health insurance plan;
 - (b) The enrollee becomes eligible for Medicare;
 - (c) The enrollee is determined eligible for Medicaid;
 - (d) The enrollee becomes eligible for TRICARE;
 - (e) The enrollee purchases an individually-funded, non-employer-sponsored health insurance plan;
 - (f) It is determined that the enrollee falsified the information given at the time of application for TennCare Standard and approval was based on this false information;
 - (g) The enrollee fails to pay the required premium in order to enroll and/or remain enrolled in TennCare Standard;
 - (h) The enrollee has failed to pay applicable co-payments for services received and the Bureau has authorized disenrollment;
 - (i) It is determined that an enrollee has abused the TennCare Program by allowing an ineligible person to utilize the enrollee's TennCare Standard identification card to obtain services, subject to federal and state laws and regulations;
 - (j) The individual fails to comply with TennCare Program requirements, subject to federal and state laws and regulations;
 - (k) It is determined that the enrollee has abused the TennCare Program by using their TennCare Standard identification card to seek or obtain drugs or supplies illegally or for resale, subject to federal and state laws and regulations;
 - (l) Death of the enrollee;
 - (m) It is determined that any of the technical eligibility requirements are no longer met;
 - (n) The enrollee has failed to respond to a recertification process requirement, to assure that the enrollee and other family members, as appropriate, remains eligible for TennCare Standard;
 - (o) When the TDHS county office receives a voluntary written request for termination of eligibility
- c. Benefits for TennCare Standard will not change until January 1, 2003. Currently, the benefits consist of enumerated covered medical services to be provided as medically necessary, including hospital, physician and pharmacy services as well as EPSDT (Early and Periodic Screening, Diagnosis and Treatment) services for children. The benefits package will be modified effective January 1, 2003, to provide limitations on some services and to require copayments for some services, including pharmacy, based upon an income sliding scale. EPSDT will not be a covered benefit as of January 1, 2003.
- d. Appeals of adverse actions for persons on TennCare Standard.

1. For persons on TennCare Standard who have been denied services, the appeals process will follow the Grier v. Wadley appeals process which has been in effect for the past two years. Enrollees may appeal any denial, delay, termination, suspension, reduction of TennCare benefits or any other act or omission by the TennCare program which impairs the quality, timeliness, or availability of such benefits.
2. An enrollee must be given notice of an adverse action and has the right to appeal. The enrollee has 30 days to file an appeal and the enrollee has a right to a decision on his/her appeal within 90 days for a regular appeal and 31 days for an expedited.
3. The appeal may be filed by telephone, fax, in person or in writing. If the enrollee needs assistance in filing an appeal, TennCare will assist him/her. The MCC has 14 days or 5 in the case of an expedited appeal to reconsider its original decision.
4. For pharmacy services, if the enrollee is denied a medication at the pharmacy, he/she must be given a notice of the denial and receive a fourteen day supply of the medication, unless the medication is non-covered, medically contraindicated, or the prescription is for less than 14 days.
5. If the TennCare Solutions Unit does not resolve the appeal, the appeal is sent to an Administrative Judge for a fair hearing. The enrollee may represent himself or have a friend or an attorney assist him with the hearing. The enrollee will be sent a Notice of Hearing telling him what the hearing is about and that he may have a hearing in person or on the telephone. The Notice will inform him of his rights at the hearing and the time and place, if appropriate.

The emergency rules set out herein were properly filed in the Department of State on the 13th day of December, 2002 and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the day of the 27th day of May, 2003. (12-11)

PROPOSED RULES

STATE BOARD OF EDUCATION - 0520

Presented herein is the proposed amendment of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate this amendment without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Karen Weeks, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 532-3528.

The text of the proposed rule is as follows:

I certify that this is an accurate and complete copy of the proposed rule lawfully promulgated and adopted by the State Board of Education on the 25th day of October, 2002.

CHAPTER 0520-1-5 PUPIL TRANSPORTATION

AMENDMENT

Subparagraph (b) of paragraph (5) of Rule 0520-1-5-.01 Operation of School Buses is amended by deleting the subparagraph in its entirety and substituting instead the following language so that as amended the subparagraph shall read:

- (b) All school bus drivers shall be required to pass annually a physical and mental examination for commercial drivers as prescribed by the United States Department of Transportation.

Authority: *T.C.A. §§49-1-302 and 49-6-2108.*

(12-17)

**CHAPTER 0520-2-3
TEACHER EDUCATION AND LICENSURE**

AMENDMENT

Rule 0520-2-3-.01 Licensure, General Requirements is amended by adding the following language as paragraph (18) so that as amended the rule shall read:

- (18) Candidates seeking licensure and endorsement as a reading specialist shall complete advanced studies in a program approved by the State Board of Education. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.

Rule 0520-2-3-.21 Effective Dates is amended by adding the following language as paragraphs (15) and (16) so that as amended the rule shall read:

- (15) Teacher candidates seeking licensure and endorsement in the following area shall meet the requirement of Rules 0520-2-3-.01(1) through (9) and 0520-2-3-.11 no later than September 1, 2005. This rule will supercede Rules 0520-2-4-.07(6) and 0520-2-4-.09(27) insofar as they apply to the area of endorsement listed below:

Reading Specialist PreK-12

- (16) Teacher candidates seeking licensure and endorsement in the following areas shall meet the requirements of Rules 0520-2-3-.01(1) through (9) and 0520-2-3-.11 no later than September 1, 2006. This rule will supercede Rule 0520-2-3-.21(4) insofar as it applies to the areas of endorsement listed below:

Special Education: Modified Program K-12

Special Education: Preschool/Early Childhood PreK-4, which will replace the Special Education Preschool/Early Childhood PreK-1

Authority: T.C.A. §49-1-302.

(12-18)

**CHAPTER 0520-7-2
NON-PUBLIC SCHOOL APPROVAL PROCESS**

AMENDMENT

Paragraph (1) of Rule 0520-7-2-.01 Categories is amended by adding the following language as subparagraph (f) so that as amended the subparagraph shall read:

- (f) Category VI schools are international schools affiliated with a Tennessee public university acting as an agency whose accreditation process is approved by the State Board of Education.

Authority: T.C.A. § 49-1-302.

Amend Chapter 0520-7-2 Non-Public School Approval Process by adding a new Rule so that as amended the rule shall read:

0520-7-2-.07 CATEGORY VI: INTERNATIONAL SCHOOLS AFFILIATED WITH A TENNESSEE PUBLIC UNIVERSITY

- (1) The State Board of Education may approve a Tennessee public university to act as a school approval agency for non-public international secondary schools. Such schools must be affiliated with the university and may serve grades 9-12 or any combination thereof. Such universities must have teacher preparation programs approved by the State Board of Education.
- (2) The State Department of Education shall consider schools approved by a university acting as a school approval agency as having approved status.
- (3) International home schools which may affiliate with a Tennessee public university are not approvable under this category.
- (4) Procedures for Application of a Tennessee Public University as an Approved Non-Public School Accrediting Agency.
 - (a) The Tennessee public university seeking approval as an agency shall apply to the State Department of Education and shall supply relevant information needed by the department.
 - (b) The State Department of Education shall review the application of the university with respect to the criteria for approval and recommend to the State Board of Education that the application be approved or denied. The applicant university may address the State Board of Education at the time its application is being considered.
- (5) Period of Approval.
 - (a) The period of approval for a recognized Tennessee public university acting as an agency shall be five years.
 - (b) A university which fails to meet the minimum standards for approval will have its approved status revoked.

- (6) Criteria for Approval of a University Acting as an Agency for the Approval of Non-Public International Schools.
- (a) Scope of Operation of University Acting as an Agency. The agency shall:
1. Have a clearly written statement of its objectives;
 2. Delineate the process by which it approves schools; and
 3. Accredit only schools with at least 200 full-time students.
- (b) Organization of University Acting as an Agency. The agency shall:
1. Specify qualifications for professional personnel for the agency; and
 2. Employ at least one full time director or headmaster.
- (c) Responsibility of the University Acting as an Agency. The agency shall:
1. Maintain written descriptions of the requirements for school approval;
 2. Re-evaluate approved schools annually;
 3. Give advance publication of proposed changes in approval standards to schools. These changes must be approved in advance by the State Department of Education;
 4. Advise schools or directly provide them with technical assistance to address deficiencies;
 5. Publish approval policies and lists of approved schools;
 6. Require schools to report on deficiencies that could affect approval status;
 7. Have procedures for revocation of approval;
 8. Provide a list of all courses taught and the grade levels at which they are taught at each school;
 9. Publish and follow minimum standards using the following criteria (or the university acting as an agency may use the standards set forth in the Rules, Regulations and Minimum Standards for the Governance of Public Schools in the State of Tennessee):
- (i) Curriculum and Graduation.
- (I) The program shall include (but not be limited to) the areas of English, mathematics, social studies, science, the arts, foreign language (which may be the language of the host country), and wellness, consistent with Tennessee curriculum standards.
 - (II) Each school shall use print and non-print materials, including textbooks, which are adequate to meet the needs of the instructional program. See Chapter 0520-1-3.

- (III) Each student shall meet the same minimum requirements for graduation as students in Tennessee public schools, with exceptions to be approved by the Department of Education. The specific requirements are listed in Chapter 0520-1-3.
- (ii) Inservice. Each school shall have a minimum of five days for inservice education per school year.
 - (iii) Teacher Licensure and Evaluation.
 - (I) Each university shall submit its procedures for licensing teachers. If the teachers are licensed by the State of Tennessee, they must meet the requirements of the state. If the teachers are licensed by the host country, they shall meet the requirements of the appropriate jurisdiction of the host country; if such teachers are employed to teach in a Tennessee school as exchange teachers, they shall be recommended for this purpose by the university acting as an agency.
 - (II) Each teacher shall hold a valid license as defined by the State of Tennessee or shall meet the requirements of the appropriate jurisdiction of the host country.
 - (III) Each university acting as an agency shall develop procedures for evaluation of all teaching personnel from the State of Tennessee.
 - (iv) Facilities.
 - (I) Each school shall comply with rules, regulations, and codes of the appropriate jurisdiction regarding planning of new buildings, alterations, and safety.
 - (II) Each school shall observe all fire safety regulations and procedures promulgated by the appropriate agency having such jurisdiction.
 - (III) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate wellness program.
 - (v) Administrative Rules.
 - (I) Each school shall maintain an operating schedule that includes the minimum number of instructional days and hours required of Tennessee public schools. See Chapter 0520-1-3.
 - (II) Each school which provides services to students eligible for special education shall meet all standards of the State Board of Education rule 0520-1-9.
 - (III) Each school shall develop and implement a written policy regarding maintenance of students in good academic standing. The written policy shall be communicated to students and parents.
 - (IV) The maximum enrollments for an individual class shall be specified and shall not exceed requirements for Tennessee public schools.

- (V) Each school shall maintain complete and accurate permanent records. A cumulative record for each student for all work in secondary school is required.
 - (VI) Each school shall evaluate records and report the needs and progress of its students.
 - (VII) Each school shall provide a sufficient number of appropriately qualified administrators, librarians and guidance counselors for the student body served.
 - (IX) Each principal or headmaster shall comply with the requirement of the local jurisdiction that each student enrolled in school be vaccinated against disease.
- (vi) Testing Program. Each school shall administer the high school examinations required by the State of Tennessee; the results must be communicated to teachers and parents and kept on file at the school for one calendar year. If passing scores are required by the State of Tennessee, then students must meet the minimum scores required in order to receive a Tennessee high school diploma. In order to receive a diploma, graduates must have achieved English language proficiency according to standards specified by the university.

Authority: *T.C.A. § 49-1-302 and 49-6-3001.*

(12-19)

The proposed rules set out herein were properly filed in the Department of State on the 19th day of Decemebr, 2002, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of April, 2003. (12-17 through 12-19)

THE TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640**CHAPTER 1640-1-14
DEPENDENT CHILDREN SCHOLARSHIP**

Presented herein are proposed amendments of the Tennessee Student Assistance Corporation submitted pursuant to Tennessee Code Annotated Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0820 and in the Department of State, Administrative Procedures Division, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendment contact: Richard G. Rhoda, Interim Executive Director, Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, 404 James Robertson Parkway, Nashville, TN 37243-0820, (615) 741-1346.

The text of the proposed amendment is as follows:

AMENDMENT

Rule 1640-1-14-.03, Application and Award Procedures, Paragraph (4) is amended by deleting the last sentence and replacing it with "If the school participates in Automated Clearing House, the funds will be sent by direct deposit to the school and the school will be directed to deliver the funds to the recipient." As amended, Paragraph (4) shall read as follows:

- (4) Payment will be made at the beginning of each academic term after certification by the institution that the student is attending full-time and making satisfactory progress. If the school participates in Automated Clearing House, the funds will be sent by direct deposit to the school and the school will be directed to deliver the funds to the recipient.

Authority: *T.C.A. §49-4-203, 49-4-204, 49-4-209 and 49-4-704.*

The proposed rules set out herein were properly filed in the Department of State on the 30th day of December, 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 30th day of April, 2002. (12-33)

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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)

- 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)

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF INSURANCE

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to Chapter No. 798 of the Public Acts of 2002, the Commissioner of Commerce and Insurance may develop and promulgate by rule standards and procedures for the administration of pre-licensing education and examination requirements for persons applying to become insurance producers licensed in this state. Section 25 of Chapter 798 authorizes the Commissioner to promulgate any public necessity rules necessary or proper to carry out the purposes of Chapter 798. The deliberation process required in the development of these rules precluded the utilization of rulemaking procedures required elsewhere in the Uniform Administrative Procedures Act. Therefore, in order to prevent a lack of regulation with respect to pre-licensing education requirements and examinations for insurance producer license applicants when Chapter 798 becomes effective on January 1, 2003, the Department of Commerce and Insurance is utilizing public necessity rulemaking as provided under Tenn. Code Ann. § 4-5-209 in order to comply with the directives of the Tennessee General Assembly. The Department of Commerce and Insurance has also filed a Notice of Rulemaking Hearing to adopt the provisions contained in these public necessity rules as permanent rules.

For a copy of the entire text of this notice contact: John F. Morris, Staff Attorney, 312 Eighth Avenue North, Twenty-Fifth Floor, William R. Snodgrass Tennessee Tower, Nashville, Tennessee 37243, Department of Commerce and Insurance, telephone (615) 741-2199.

Anne B. Pope
Commissioner
Department of Commerce and Insurance

**PUBLIC NECESSITY RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE**

**CHAPTER 0780-1-74
PRE-LICENSING EDUCATION AND EXAMINATION REQUIREMENTS
FOR INSURANCE PRODUCERS**

NEW RULES

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0780-1-74-.01 PRE-LICENSING EDUCATION REQUIREMENTS.

- (1) All applicants for an insurance producer license, unless otherwise exempted by law, are required to attend a pre-licensing course of study prior to taking the examination required.
- (2) The pre-licensing course taken by the applicant must be approved by the Commissioner and consist of no less than sixty percent (60%) instructional/classroom hours and no more than forty percent (40%) self-study hours.
- (3) The amounts of total hours which an insurance producer is required to take are listed as follows:

<u>Lines of Insurance</u>	<u>Number of Hours</u>
Title	5
Life	20
Accident and Health	20
Property	20
Casualty	20
Personal	30

- (4) The applicant shall certify to the Commissioner in or with the application for insurance producer license that such applicant has completed a pre-licensing course of study approved by the Commissioner for each line of insurance for which an insurance producer license is requested.

Authority: 2002 Tenn. Pub. Acts ch. 798, §§ 7 and 25, and Tenn. Code Ann. §§ 56-6-106 and 56-6-124.

0780-1-74-.02 EXAMINATION REQUIREMENTS.

- (1) All applicants for an insurance producer license, unless otherwise exempted by law, are required to pass a written examination in order to test the applicant's knowledge as to the line of insurance for which a license is applied, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. There shall be a separate examination for each line of insurance in which an insurance producer may be licensed. Applicants wishing to be licensed as an insurance producer in more than one line of insurance shall take each applicable examination.

- (2) Each examination for a license shall be approved for use by the Commissioner. Examinations for licensing shall be at such reasonable times and places accessible to the applicants as are designated by the Commissioner.
- (3) An individual taking an examination pursuant to this rule shall pay a non-refundable fee in order to take such examination. An individual who takes an examination more than once shall pay the examination fee for each subsequent taking of the examination, regardless of the reason for the subsequent examinations.
- (4) The minimum score that will be considered as a passing score for any examination given hereunder is seventy percent (70%). Any score on an exam below seventy percent (70%) shall be considered a failing score.
 - (a) An individual who has failed to pass an examination for a license applied for may take another examination following the expiration of thirty (30) days from the date of the applicant's last unsuccessful examination upon submission of the examination fee.
 - (b) An individual who has received a failing score on three (3) successive attempts of taking an examination for a license applied for will not be permitted to take a subsequent examination until the expiration of one (1) year from the date of the taking of the individual's last unsuccessful examination. After the one (1) year period, the individual may retake the examination upon completing all pre-licensing education requirements enumerated in Rule 0780-1-74-.01. The individual shall also be required to file a new application accompanied by the appropriate filing and examination fees.
- (5) The Commissioner may enter into a contract with a testing organization for the examination of applicants for license as an insurance producer. Notwithstanding any other provisions of this chapter, such contract may provide that the testing organization shall:
 - (a) Assume responsibility for administration and grading of the examination; and
 - (b) Charge and collect reasonable non-refundable examination fees, subject to the approval of the Commissioner.
- (6) No individual taking an examination for an insurance producer license shall possess or examine the examination questions and/or answers prior to the time of examination, nor shall any such individual use improper notes or other reference materials during the examination. Furthermore, no person shall have such questions or answers reproduced and/or disseminated for the purposes of assisting an insurance producer in passing an examination.

Authority: 2002 Tenn. Pub. Acts ch. 798, §§ 6, 7 and 25, and Tenn. Code Ann. §§ 56-6-105 through 56-6-106 and 56-6-124.

0780-1-74-.03 AGENTS FOR HEALTH MAINTENANCE ORGANIZATIONS.

All agents of health maintenance organizations, as that term is defined in Tenn. Code Ann. ' 56-32-214(a), must obtain an insurance producer license in the line of accident and health insurance prior to acting as an agent. Such persons are required to meet all requirements for licensure, to include, but not necessarily be limited to, the requirements under Tenn. Code Ann. Title 56, Chapter 6, as well as any other rules or regulations promulgated by the Commissioner, such as any pre-licensing and continuing education requirements, as well as examination requirements.

Authority: *2002 Tenn. Pub. Acts ch. 798, § 25 and Tenn. Code Ann. §§ 56-6-124 and 56-32-214.*

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of December, 2002, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the day of the 13th day of June, 2003. (12-20)

RULEMAKING HEARINGS

THE 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 and the repeal of rules pursuant to Tenn. Code Ann. § 68-102-113. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:30 a.m. (CST) on the nineteenth day of February, 2003.

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

For a copy of this notice of rulemaking hearing, contact: John Parker, Director, Electrical Section, Division of Fire Prevention, Department of Commerce and Insurance, 500 James Robertson Parkway, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-7170.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-2-1 ELECTRICAL INSTALLATIONS

AMENDMENTS

Chapter 0780-2-1 Electrical Installations is amended by deleting the abbreviation "T.C.A." and the words "Tennessee Code Annotated" wherever they appear and substituting instead the abbreviation "Tenn. Code Ann."

Authority: *T.C.A. §68-102-113.*

Rule 0780-2-1-.02 Adoption by Reference is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0780-2-1-.02 ADOPTION BY REFERENCE. Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for materials, installations, use of facilities, equipment, devices and appliances conducting, conveying, consuming or using electrical energy in, or in connection with, any building, structure, or any premises located in this state shall be those prescribed in the National Electrical Code, 2002 edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Subparagraph (c) of paragraph (3) of rule 0780-1-2-.04 Inspections is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, subparagraph (c) of paragraph (3) shall read:

- (c) All grounding connections must be in compliance with Section 300-10 of the 2002 National Electrical Code except as set forth in the exceptions enumerated in this subparagraph.

- | | |
|------------------|--|
| Exception No. 1: | Where that portion of an installation which constitutes service conductors and equipment is changed or modified. |
| Exception No. 2: | Where all wiring or raceway is exposed. |
| Exception No. 3: | The requirements of (a) above shall not apply where inspection is performed on raceway systems only. |

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Paragraph (6) of rule 0780-2-1-.04 Inspections is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (6) shall read:

- (6) Except as provided in rule 0780-2-1-.05(2), the inspector will not issue a certificate of approval on an installation performed by any person, firm, corporation or legal entity not duly licensed in accordance with Tenn. Code Ann. Title 62, Chapter 6.

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Paragraph (2) of rule 0780-2-1-.05 Permits is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (2) shall read:

- (2) Any person may perform electrical work (for which an inspection is required) upon his own residence provided he first applies for and obtains a property owner's electrical permit. This permit shall only extend to the applicant and the immediate members of the applicant's family. The permit shall not authorize assistance by any other person not duly licensed in accordance with Tenn. Code Ann. Title 62, Chapter 6. A property owner's permit shall automatically expire upon completion of the work for which the permit was issued. All work done under such permit shall be subject to regular inspection requirements and fees and other applicable laws and regulations. Only one (1) property owner's permit may be obtained within a twelve (12) month period unless the property owner can establish loss of his home by fire, wind-storm, etc.

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Subparagraph (b) of paragraph (4) of rule 0780-2-1-.05 Permits is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, subparagraph (b) of paragraph (4) shall read:

- (b) Proof of licensure pursuant to Tenn. Code Ann. Title 62, Chapter 6 (except for a property owner's permit).

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Paragraph (2) of rule 0780-2-1-.07 Special Occupancies is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (2) shall read:

- (2) Conductors serving swimming pools which originate at a dwelling unit service equipment or sub-panel located on the interior of the dwelling unit may be installed utilizing the appropriate wiring methods contained in Chapter 3 of the 2002 National Electrical Code. The wiring method shall comply with Article 680, 2002 National Electrical Code regarding that portion of the installation on the exterior of the dwelling unit.

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Paragraph (2) of rule 0780-2-1-.11 Dwelling Units is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (2) shall read:

- (2) Light fixtures in clothes closets 28" or less in depth shall be mounted on the ceiling or wall above the door. These fixtures shall be so located that the fixture is within four (4) inches of the intersection of the ceiling and entrance wall. Such fixtures shall be thermally protected and either incandescent recessed with solid lens or fluorescent with single bulb holder. Fixtures installed in closets of larger dimensions shall comply with the 2002 edition of the National Electrical Code.

Authority: T.C.A.. §§68-102-113 and 68-102-143.

Paragraph (1) of rule 0780-2-1-.15 Used Manufactured Homes is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) Manufactured homes shall have listed, enclosed-type service-entrance equipment located inside the manufactured home, with proper rated overcurrent protection for each branch circuit. Overcurrent protection for circuits of 20 amperes or less may be either circuit breakers, or plug fuses and fuse holders of Type "S", and shall be of the time-delay type. The manufactured home disconnecting means located inside shall be fed from an outside location with a feeder from the main service entrance for such manufactured home. If the supply or feeder from the main service to the disconnecting means located inside does not have a grounding conductor as required by Article 550 of the 2002 National Electrical Code, one shall be installed.

**CHAPTER 0780-2-1
ELECTRICAL INSTALLATIONS**

REPEALS

Rule 0780-2-1-.16 Examinations is repealed.

Authority: T.C.A., §68-102-113.

Rule 0780-2-1-.19 Electrical Installer Registration Requirements is repealed.

Authority: T.C.A., §68-102-113.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of December, 2002. (12-30)

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

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments pursuant to T.C.A. 68-202-101 et seq. and 68-202-201 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 17th Floor Conference Room of the L & C Tower located at 401 Church Street, Nashville, Tennessee, at 10:00 a.m. (CST), on the 19th day of February, 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 made in person, by writing, telephone or other means and should be made no less than ten (10) days prior to February 19, 2003, or ten (10) days prior to the date such party intends to review such filings, to allow time for the Department to determine how it may reasonably provide such aids or services. Contact the Tennessee Department of Environment and Conservation, John White, ADA Coordinator, L & C Annex, Seventh Floor; 401 Church Street, Nashville, TN 37243-0437; (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

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

SUBSTANCE OF PROPOSED RULE

NEW RULE

**CHAPTER 1200-2-5
STANDARDS FOR PROTECTION AGAINST RADIATION**

1200-2-5-.162 TYPE X QUANTITIES AND TRANSPORT GROUPS

- (1) *Transport group* as used in this rule means any one of seven groups into which radionuclides in normal form are classified, according to their toxicity and their relative potential hazard in transport, in Table RHS 2-3.
 - (a) Any radionuclide, not specifically listed in one of the groups in Table RHS 2-3 shall be assigned to one of the groups in accordance with Table RHS 2-2.
 - (b) For mixtures of radionuclides the following shall apply:
 - 1. If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all groups present, of the ratio between the total activity for each group to the permissible activity for each group will not be greater than unity.
 - 2. If the groups of the radionuclides are known, but the activity in each group cannot be reasonably determined, the mixture shall be assigned to the most restrictive group present.
 - 3. If the identity of all or some of the radionuclides cannot be reasonably determined, each of the unidentified radionuclides shall be considered as belonging to the most restrictive group which cannot be positively excluded.
 - 4. Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The group and activity shall be that of the first member present in the chain, except that if a radionuclide “x” has a half-life longer than that of the first member and an activity greater than that of any other member, including the first, at any time during transportation, the group of the nuclide “x” and the activity of the mixture shall be the maximum activity of that nuclide “x” during transportation.

TABLE RHS 2-1

TYPE X QUANTITIES

TransportGroup	Type XQuantity limit(in curies)
I	0.001
II	0.050
III	3
IV	20
V	20
VI	1,000
VII	1,000

Special Form

20

TABLE RHS 2-2

Radionuclide onemillion years	0 to 1,000days	Radioactive half-life 1,000 days to one million years	over
AtomicNumber 1-81	Group III	Group II	Group III
AtomicNumber 82 and Over	Group I	Group I	Group III

TABLE RHS 2-3**TRANSPORT GROUPING OF RADIONUCLIDES**

Element *	Radionuclide ***	Group	
Actinium (89)	Ac-227	I	
	Ac-228	I	
Americium (95)	Am-241	I	
	Am-243	I	
Antimony (51)	Sb-122	IV	
	Sb-124	III	
	Sb-125	III	
Argon (18)	Ar-37	VI	
	Ar-41	II	
	Ar-4 (uncompressed) **	V	
Arsenic (33)	As-73	IV	
	As-74	IV	
	As-76	IV	
	As-77	IV	
Astatine	At-211	III	
	Barium (56)	Ba-131	IV
		Ba-133	II
Ba-140	III		
Berkelium	Bk-249	I	
Beryllium (4)	Be-7	IV	
Bismuth (83)	Bi-206	IV	
	Bi-207	III	
	Bi-210	II	
	Bi-212	III	
Bromine (35)	Br -82	IV	
Cadmium (48)	Cd-109	IV	
	Cd-115 m	III	
	Cd-115	IV	
Calcium (20)	Ca-45	IV	
	Ca-47	IV	
Californium (98)	Cf-249	I	
	Cf-250	I	
	Cf-252	I	
Carbon (6)	C-14	IV	
Cerium (58)	Ce-141	IV	
	Ce-143	IV	
	Ce-144	III	

Cesium (55)	Cs-131	IV	
	Cs-134 ^m	III	
	Cs-134	III	
	Cs-135	IV	
	Cs-136	IV	
	Cs-137	III	
	Element *	Radionuclide ***	Group
Chlorine (17)	Cl-36	III	
	Cl-38	IV	
	Cr-51	IV	
Chromium (24)	Co-56	III	
Cobalt (27)	Co-57	IV	
	Co-58m	IV	
	Co-58	IV	
	Co-60	III	
	Copper (29)	Cu-64	IV
		Curium (96)	Cm-242
	Cm-243		I
Cm-244	I		
Cm-245	I		
Cm-246	I		
Dysprosium (66)	Dy-154		III
	Dy-165		IV
	Dy-166	IV	
	Erbium (68)	Er-169	IV
Er-171		IV	
Europium (63)		Eu-130	III
	Eu-152 ^m	IV	
	Eu-152	III	
	Eu-154	II	
	Eu-155	IV	
	Fluorine(9)	F-18	IV
Gadolinium (64)	Gd-153	IV	
	Gd-159	IV	
	Gallium (31)	Ga-67	III
Germanium (32)		Ge-71	IV
	Gold (79)	Au-193	III
Au-194		III	
Au-195		III	
Au-196		IV	
Au-198		IV	
Au-199		IV	
Hafnium (72)		Hf-181	IV
Holmium (67)		Ho-166	IV
Hydrogen (1)	H-3 (see tritium)		
Indium (49)	In-113 ^m	IV	
	In-114 ^m	III	
	In-115 ^m	IV	
	In-115	IV	
	Iodine (53)	I-124	III
I-125		III	

	I-126	III
	I-129	III
	I-131	III
Element *	Radionuclide ***	Group
	I-133	III
Iridium (77)	Ir-190	IV
	Ir-192	III
	Ir-194	IV
Iron (26)	Fe-55	IV
Krypton (36)	Kr-85 ^m	III
	Kr-85 ^m (uncompressed) **	V
	Kr-85	III
	Kr-85 (uncompressed) **	VI
	Kr-87 (uncompressed) **	V
Lanthanum (57)	La-140	IV
Lead (82)	Pb-203	IV
	Pb-210	II
	Pb-212	II
Lutetium (71)	Lu-172	III
	Lu-177	IV
Magnesium (12)	Mg-28	IV
Manganese (25)	Mn-52	IV
Mercury (80)	Hg-197 m	IV
	Hg-197	IV
	Hg-203	IV
Mixed fission products(MFP)		II
Molybdenum (42)	Mo-99	IV
Neodymium (60)	Nd-147	IV
	Nd-149	IV
Neptunium (93)	Np-237	I
	Np-239	I
Nickel (28)	Ni-56	III
	Ni-59	IV
	Ni-63	IV
	Ni-65	IV
Niobium (41)	Nb-93 ^m	IV
	Nb-95	IV
	Nb-97	IV
Osmium (76)	Os-185	IV
	Os-191 ^m	IV
	Os-191	IV
	Os-193	IV
Palladium (46)	Pd-103	IV
	Pd-109	IV
Phosphorus (15)	P-32	IV
Platinum (78)	Pt-191	IV
	Pt-193	IV
	Pt-193 ^m	IV
	Pt-197 ^m	IV
	Pt-197	IV
Element *	Radionuclide ***	Group
Plutonium (94)	Pu-238 (F)	I

	Pu-239 ^(F)	I
	Pu-240	I
	Pu-241 ^(F)	I
	Pu-242	I
Polonium (84)	Po-210	I
Potassium (19)	K-42	IV
	K-43	III
Praseodymium (39)	Pr-142	IV
	Pr-143	IV
Promethium (61)	Pm-147	IV
	Pm-149	IV
Protactinium (91)	Pa-230	I
	Pa-231	I
	Pa-233	II
Radium (88)	Ra-223	II
	Ra-224	II
	Ra-226	I
	Ra-228	I
Radon (86)	Rn-220	IV
	Rn-222	II
Rhenium (75)	Re-183	IV
	Re-186	IV
	Re-187	IV
	Re-188	IV
	Re Natural	IV
Rhodium (43)	Rh-103 m	IV
	Rh-105	IV
Rubidium (37)	Rb-86	IV
	Rb Natural	IV
Ruthenium (44)	Ru-97	IV
	Ru-103	IV
	Ru-105	IV
	Ru-106	III
Samarium (62)	Sm-145	III
	Sm-147	III
	Sm-151	IV
	Sm-153	IV
Scandium (21)	Sc-46	III
	Sc-47	IV
	Sc-48	IV
Selenium (34)	Se-75	IV
Silicon (14)	Si-31	IV
Silver (47)	Ag-105	IV
	Ag-110 ^m	III
	Ag-111	IV
Sodium (11)	Na-22	III
	Na-24	IV
Strontium (38)	Sr-85 m	IV
	Sr-85	IV
	Sr-89	III
	Sr-91	III

	Sr-92	IV		
Sulphur (16)	S-35	IV		
Tantalum (73)	Ta-182	III		
Technetium (43)	Tc-96 ^m	IV		
	Tc-96	IV		
	Tc-97 ^m	IV		
	Tc-97	IV		
	Tc-99 ^m	IV		
	Tc-99	IV		
	Tellurium (32)	Te-125 ^m	IV	
		Te-127 ^m	IV	
Te-127		IV		
Te-129 ^m		III		
Te-129		IV		
Te-131 ^m		III		
Te-132		IV		
Terbium (63)		Tb-160	III	
Thallium (81)	Tl-200	IV		
	Tl-201	IV		
	Tl-202	IV		
	Tl-204	III		
	Thorium (90)	Th-227	II	
Th-228		I		
Th-230		I		
Th-231		I		
Th-232		III		
Th-234		II		
Th Natural		III		
Thulium (69)		Tm-168	III	
		Tm-170	III	
	Tm-171	IV		
Tin-(50)	Sn-113	IV		
	Sn-117 ^m	III		
	Sn-121	III		
	Sn-125	IV		
Tritium (1)	H-3	IV		
	H-3 (as a gas, as luminous paint, or absorbed on solid material)		VII	
Tungsten (74)	W-181	IV		
	W-185	IV		
	W-187	IV		
Uranium (92) Element *	U-230	II		
	Radionuclide ***	Group		
	U-232	I		
	U-233 ^(F)	II		
	U-234	II		
	U-235 ^(F)	III		
	U-236	II		
	U-238	III		
	U Natural	III		
	U Enriched ^(F)	III		
	U Depleted	III		

Vanadium (23)	V-48	IV
	V-49	III
Xenon (34)	Xe-125	III
	Xe-131 ^m	III
	Xe-131 ^m (uncompressed) **	V
	Xe-133	III
	Xe-133 (uncompressed) **	VI
	Xe-135	II
	Xe-135 (uncompressed) **	V
Ytterbium (70)	Yb-175	IV
Yttrium (39)	Y-88	III
	Y-90	IV
	Y-91 ^m	III
	Y-91	III
	Y-92	IV
	Y-93	IV
	Zinc (30)	Zn-65
	Zn-69 ^m	IV
	Zn-68	IV
	Zn-69	IV
Zirconium (40)	Zr-93	IV
	Zr-95	III
	Zr-97	IV

Authority: T.C.A. §68–202–101 et seq.

(Footnotes)

* Atomic number shown in parentheses.

*** Atomic weight shown after the Radionuclide Symbol.

** Uncompressed means at a pressure not exceeding one atmosphere.

m Metastable State.

(F) Fissile material.

⁴ Labeled means labeled with a Radioactive White I, Yellow II or Yellow III label as specified in U.S.

Department of Transportation (DOT) regulations in 49 CFR §§172.403 and 172.436–440, as published October 1, 1993.

**AMENDMENTS
CHAPTER 1200–2–4
GENERAL PROVISIONS**

The last sentence of subparagraph (1)(a) of Rule 1200–2–4-.04 Definitions is amended by deleting the words “Appendix A to 10 CFR 71, as amended April 1, 1996,” and substituting the words “Rule 1200–2–10-.37”, so that as amended the sentence shall read:

- (1) (a) The values either are listed in Table A–1 of Rule 1200–2–10-.37 or may be derived in accordance with the procedures prescribed in Schedule 10–6, Rule 1200–2–10-.37.

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

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

- (1) Address notifications and reports required by these regulations, communications concerning these regulations and applications filed hereunder as follows:
 - (a) Telephone notifications and communications, 7:00 a.m. Central Time to 4:30 p.m. Central Time, except weekends and holidays:
Division of Radiological Health.....615-532-0364
 - (b) Telephone notifications, all other times:
Tennessee Emergency Management Agency (TEMA):.....1-800-262-3300
 - (c) Applications, written notifications, reports and communications:
Division of Radiological Health
Tennessee Department of Environment and Conservation
L & C Annex, Third Floor
401 Church Street
Nashville, Tennessee 37243-1532
 - (d) Facsimile communications:
Division of Radiological Health.....615-532-7938
- (2) Reserved.

Authority: T.C.A. §68-202-101 et seq.

**CHAPTER 1200-2-5
STANDARDS FOR PROTECTION AGAINST RADIATION**

Rule 1200-2-5-.30 Purpose is amended by deleting the words “(herein Basic Standards)”. The word “standards” is substituted for each occurrence of the words “Basic Standards”. As amended the rule shall read:

- (1) The regulations in 1200-2-5-.30 through 1200-2-5-.161 establish standards for protection against ionizing radiation. These standards are issued under Tennessee Code Annotated (T.C.A.) 4-5-201 et seq. and 68-202-203 and 206, as amended. These standards are also issued to meet the Nuclear Regulatory Commission’s requirements for compatibility as set out in 42 United States Code Annotated (USCA) Section 2021(d)(2) and 10 CFR 20. It is the intent of the Division of Radiological Health of the Tennessee Department of Conservation that these rules enable the State of Tennessee to maintain its compatibility as an Agreement State. This principle should be considered, when relevant, in any interpretation of these rules. To that end, judicial or administrative interpretation of corresponding rules in other jurisdictions should be given persuasive authority.
- (2) The purpose of these standards is to control the receipt, possession, use, transfer and disposal of sources of radiation by any person. This is done so that the total dose to an individual from all sources of radiation other than background radiation does not exceed these standards. However, nothing in these standards

shall be construed as limiting a licensee's or registrant's actions that may be necessary to protect health and safety during an emergency.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206

Rule 1200-2-5-.31 Scope is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the rule shall read:

These standards apply to all persons who receive, possess, use, transfer or dispose of sources of radiation within the jurisdiction of the State of Tennessee. The limits in these standards do not apply to doses due to background radiation or to exposure of patients to radiation for medical diagnosis or therapy.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206.

Paragraphs (7) and (78) of Rule 1200-2-5-.32 Definitions is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the paragraphs shall read:

- (7) *ALARA* (acronym for *as low as is reasonably achievable*) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in these standards as is practical consistent with the purpose for which the activity is undertaken and taking into account:
- (78) *Year* means the period of time beginning in January used to determine compliance with the provisions of these standards. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206.

Paragraphs (1) and (2) of Rule 1200-2-5-.33 Units of Radiation Dose is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the paragraphs shall read:

- (1) Definitions. As used in these standards the units of radiation dose are:
- (2) As used in these standards the quality factors for converting absorbed dose to dose equivalent are shown in Table RHS 5-1.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 206.

Paragraph (1) of Rule 1200-2-5-.34 Units of Radioactivity is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the paragraph shall read:

For the purposes of these standards, activity is expressed in the special unit of curies (Ci) or in the SI unit of becquerels (Bq), or their multiples, or disintegrations (transformations) per unit of time.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 206.

Rule 1200-2-5-.36 is deleted in its entirety.

The first sentence of paragraph (1) of Rule 1200-2-5-.40 Radiation Protection Programs is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the sentence shall read:

Each licensee and registrant shall develop, document and implement a radiation protection program for a licensee's or registrant's activities that ensures compliance with these standards.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 206.

Rule 1200-2-5-.59 Reserved is amended by deleting the rule in its entirety and substituting the following, so that as amended Rule 1200-2-5-.59 shall read:

1200-2-5-.59 ORDER REQUIRING FURNISHING OF BIOASSAY SERVICES

Where necessary to ascertain the extent of an individual's exposure to concentrations of radioactive material, the Division may require a licensee to make available to the individual bioassay services and to furnish a copy of the reports of such services to the Division.

Authority: T.C.A. §68-202-101 et seq.

Subparagraph (1)(a) and paragraph (3) of Rule 1200-2-5-.70 General Survey and Monitoring Requirements is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the subparagraph and paragraph shall read:

- (1) (a) May be necessary for the licensee or registrant to comply with the standards in this chapter; and
- (3) Except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities, all personnel dosimeters for determining the dose and used to comply with these standards or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 206.

Subparagraph (6)(a) of Rule 1200-2-5-.80 Control of Access to High Radiation Areas Requirements is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the subparagraph shall read:

There are personnel in attendance who will take necessary precautions to prevent exposure of individuals to radiation or radioactive material in excess of the limits in these standards; and

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 206.

Subparagraphs (1)(b) and (9)(a) and part (1)(h)7. of Rule 1200-2-5-.82 Control of Access to Very High Radiation Areas-Irradiators is amended by substituting the word "standards" for the words "Basic Standards", so that as amended the subparagraphs and part shall read:

- (1) (b) Each installation shall have primary barriers and/or secondary barriers sufficient to assure compliance with 1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 and 1200-2-5-.60 of these standards.
- (h) 7. No individual shall be permitted to enter an area, the access of which is controlled by interlocks, while such interlocks are bypassed as permitted in 1200-2-5-.82(1)(h)5, un-

less such individual is utilizing personnel monitoring equipment that shall give an audible indication when a dose rate of .015 rem (.15 mSv) per hour is exceeded. The personnel monitoring equipment referred to in this paragraph is in addition to that required elsewhere in these standards. Calibration requirements in 1200-2-5-.70(2) shall also apply to such personnel monitoring equipment.

- (9) (a) The registrant exercises control to ensure the patient will be the only person exposed to radiation levels exceeding the limits in these standards; and

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 206.

Paragraph (2) of Rule 1200-2-5-.114 Exemptions to Labeling Requirements is amended by deleting “Table 3” and substituting “Table 2”, so that as amended the paragraph shall read:

- (20) Containers holding radioactive material in concentrations less than those specified in Table 2 of Schedule RHS 8-30;

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Paragraphs (1) through (4) of Rule 1200-2-5-.115 Procedures for Receiving and Opening Packages are amended by deleting the paragraphs and substituting the following, so that as amended the paragraphs shall read:

- (1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in subparagraph 1200-2-4-.04(1)(iii), shall arrange to receive:
- (a) The package when the carrier offers it for delivery; or
 - (b) Notification of the arrival of the package at the carrier’s terminal and to take possession of the package expeditiously.
- (2) Each licensee shall:
- (a) Monitor the external surfaces of a labeled ⁴ package for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in subparagraph 1200-2-4-.04(1)(bbb);
 - (b) Monitor the external surfaces of a labeled 4 package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in subparagraph 1200-2-4-.04(1)(iii) and Rule 1200-2-10-.37, Schedule RHS 10-6; and
 - (c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet or damaged.
- (3) The licensee shall monitor as soon as practical after receipt of the package. A package received at the licensee’s facility during the licensee’s normal working hours or showing evidence of package degradation shall be monitored within three (3) hours. A package not received during the licensee’s normal working hours and not showing evidence of package degradation shall be monitored no later than three (3) hours after the beginning of the next working day.

- (4) The licensee shall immediately notify the final delivery carrier and the Division by telephone, telegram, mailgram or facsimile when either removable radioactive surface contamination or external radiation levels exceed the following:

- (a) Removable radioactive surface contamination limits:

- 1. The level of removable (non-fixed) radioactive contamination on the external surfaces of each package offered for transport shall be kept ALARA. The level of removable radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements shall be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in part 1200-2-5-.115(4)(a)2, the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, shall not exceed the limits set forth in Table RHS 5-3 at any time during transport. Other methods of assessment of equal or greater efficiency may be used. When other methods are used, the detection efficiency of the method used shall be taken into account and in no case shall the removable contamination on the external surfaces of the package exceed ten (10) times the limits set forth in Table RHS 5-3.

Table RHS 5-3 REMOVABLE EXTERNAL RADIOACTIVE CONTAMINATION
WIPE LIMITS

Contaminant	Maximum Permissible Limits		
	Bq/cm ²	μCi/cm ²	dpm/cm ²
Beta and gamma emitters and low toxicity alpha emitters; all radionuclides with half-lives less than 10 days; natural uranium; natural thorium; uranium-235; uranium-238; thorium-232; thorium-228; and thorium-230 when contained in ores or physical concentrates	0.37	1 (E-5)	22
All other alpha emitting radionuclides	0.037	1 (E-6)	2.2

- 2. For packages transported as exclusive use shipments by rail or highway only, the removable contamination at any time during transport shall not exceed ten (10) times the levels prescribed in Table RHS 5-1. The levels at the beginning of transport shall not exceed the levels prescribed in Table RHS 5-1.

- (b) External radiation limits:

- 1. The external radiation levels around the package and around the vehicle, if applicable, shall not exceed 200 millirems (2 millisieverts) per hour at any point on the external surface of the package at any time during transportation. The transport index shall not exceed 10.
- 2. A package that exceeds the radiation level limits specified in part 1200-2-5-.115(4)(b)1 shall be transported as exclusive use by rail, highway, or water, and the radiation levels external to the package shall not exceed the following during transportation:

- (i) 200 millirems (2 millisieverts) per hour on the accessible external surface of the package, unless the following conditions are met, in which case the limit is 1,000 millirems (10 millisieverts) per hour:
 - (I) The shipment is made in a closed transport vehicle;
 - (II) The package is secured within the vehicle so that its position remains fixed during transportation; and
 - (III) There are no loading or unloading operations between the beginning and end of the transportation;
- (ii) Two hundred (200) millirems (2 millisieverts) per hour at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load, or enclosure, if used, and on the lower external surface of the vehicle; and
- (iii) Ten (10) millirems (0.1 millisievert) per hour at any point 2 meters (6.6 feet) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 meters from the vertical planes projected from the outer edges of the vehicle (excluding the top and underside of the vehicle); and
- (iv) Two (2) millirems (0.02 millisievert) per hour in any normally-occupied space of the vehicle, except that this provision does not apply to private motor carriers if persons occupying these spaces wear radiation monitoring devices in accordance with Rule 1200-2-5-.71.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Rule 1200-2-5-.126 Compliance with Environmental and Health Protection Regulations is amended by substituting the word “standards” for the words “Basic Standards”, so that as amended the rule shall read:

Nothing in these standards relieves the licensee from complying with other federal, state and local regulations governing toxic or hazardous properties of waste materials.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Paragraph (1) of Rule 1200-2-5-.130 General Records Provisions is amended by substituting the word “standards” for the words “Basic Standards”, so that as amended the rule shall read:

Each licensee and registrant shall use the units: curie, rad, rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by these standards.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Part (1)(c)2. of Rule 1200-2-5-.143 Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits is amended by substituting the word “standards” for the words “Basic Standards”, so that as amended the part shall read:

An unrestricted area in excess of 10 times any limit set forth in these standards, the license or registration; whether or not there is exposure of any individual in excess of the limits in 1200-2-5-.60).

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Rule 1200-2-5-.150 Applications for Exemptions Limits is amended by substituting the word “standards” for the words “Basic Standards”, so that as amended the rule shall read:

The Division may, upon application by a licensee or registrant or upon its own initiative, grant a specific written exemption from these standards if the Division determines the exemption is authorized by law and would not result in undue hazard to life or property.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206.

Rule 1200-2-5-.152 Reserved is amended by deleting the rule in its entirety and substituting the following, so that as amended Rule 1200-2-5-.152 shall read:

1200-2-5-.152 VACATING PREMISES.

Each specific licensee shall, no less than 30 days before vacating or relinquishing possession or control of premises, notify the Division in writing of intent to vacate. If the premises have been contaminated with radioactive material as a result of his activities, the Department may require that the licensee decontaminate or have decontaminated the location to a level for use as an unrestricted area, the details to be specified in each case by the Division.

Authority: T.C.A. §68-202-101 et seq.

Rule 1200-2-5-.160 Violations is amended by substituting the word “standards” for the words “Basic Standards”, so that as amended the rule shall read:

A violation of any of these standards subjects the violator to possible civil and criminal penalties.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206.

CHAPTER 1200-2-6 USE OF X-RAY APPARATUS

Paragraph (2) of Rule 1200-2-6-.04 General Safety Precautions is amended by deleting “1200-2-5-.03, 1200-2-5-.06(1), or 1200-2-5-.07” and substituting “1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 or 1200-2-5-.60”, so that as amended the paragraph shall read:

Unless otherwise specified, each installation shall be provided with such primary barriers and/or secondary barriers as are necessary to assure compliance with 1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 or 1200-2-5-.60, whichever applies.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

The first sentence of subparagraph (1)(f) of Rule 1200-2-6-.07 Analytical X-Ray Installations is amended by deleting “1200-2-5-.12” and substituting “1200-2-5-.111”, so that as amended the sentence shall read:

In addition to any signs and labels required in 1200-2-5-.111, a sign or label shall be placed on or adjacent to each x-ray tube housing and shall be located so as to be clearly visible to any individual who may be working in close proximity to the primary beam path.

Subparagraph (2)(h) of Rule 1200-2-6-.07 Analytical X-Ray Installations is amended by deleting “1200-2-5-.03, 1200-2-5-.06, 1200-2-5-.07, 1200-2-5-.10, 1200-2-5-.11, and 1200-2-5-.22” and substituting “1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56, 1200-2-5-.60, 1200-2-5-.70, 1200-2-5-.71(1), 1200-2-5-.130, 1200-2-5-.132, and 1200-2-5-.135”, so that as amended the subparagraph shall read:

Surveys and personnel monitoring shall be provided to insure compliance with the requirements of Chapter 1200-2-5 (See 1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56, 1200-2-5-.60, 1200-2-5-.70, 1200-2-5-.71(1), 1200-2-5-.130, 1200-2-5-.132, and 1200-2-5-.135).

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

The last sentence of subparagraph (2)(a) of Rule 1200-2-6-.08 X-Ray Gauges is amended by deleting “1200-2-5-.22” and substituting “1200-2-5-.130 and 1200-2-5-.135”, so that as amended the sentence shall read:

Records of exposure shall be kept as required in 1200-2-5-.130 and 1200-2-5-.135.

The last sentence of subparagraph (2)(d) of Rule 1200-2-6-.08 X-Ray Gauges is amended by deleting “1200-2-5-.22(2)” and substituting “1200-2-5-.130 and 1200-2-5-.132(1)”, so that as amended the sentence shall read:

Records of such surveys shall be kept as required by 1200-2-5-.130 and 1200-2-5-.132(1).

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

CHAPTER 1200-2-7 USE OF SEALED RADIOACTIVE SOURCES IN THE HEALING ARTS

Subparagraph (1)(c) of Rule 1200-2-7-.03 Interstitial, Intracavitary, and Superficial Applications is amended by deleting “1200-2-5-.03, 1200-2-5-.06(1), and 1200-2-5-.07” and substituting “1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 and 1200-2-5-.60”, so that as amended the subparagraph shall read:

When not in use, sealed sources and applicators containing sealed sources shall be kept in a protective enclosure of such material and wall thickness as may be necessary to insure that provisions of 1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 and 1200-2-5-.60 are met.

The last sentence of subparagraph (2)(d) of Rule 1200-2-7-.03 Interstitial, Intracavitary, and Superficial Applications is amended by deleting the sentence and substituting the following, so that as amended the sentence shall read:

A report shall be filed with the Division at the address in Rule 1200-2-4-.07 within five (5) days of the test; the report shall describe the equipment involved, the test results and the corrective action taken.

Subparagraph (4)(a) of Rule 1200-2-7-.03 Interstitial, Intracavitary, and Superficial Applications is amended by deleting “1200-2-5-.12” and “1200-2-5-.13(2)” and substituting “1200-2-5-.111” and “1200-2-5-.111(7)”, so that as amended the subparagraph shall read:

In addition to the requirements of 1200-2-5-.111, the bed, cubicle or room of the brachytherapy patient shall be posted with a sign indicating the presence of brachytherapy sealed sources. This sign shall incorporate the radiation symbol, and specify the radionuclide, the date, the activity and the individual to contact for radiation safety instructions. The sign is not required provided the exception in 1200-2-5-.111(7) is met.

Part (4)(b)3. of Rule 1200-2-7-.03 Interstitial, Intracavitary, and Superficial Applications is amended by deleting “1200-2-5-.03” and substituting “1200-2-5-.50” so that as amended the part shall read:

The precautionary instructions necessary to assure that the exposure of individuals does not exceed that permitted under 1200-2-5-.50.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Subparagraph (4)(e) of Rule 1200-2-7-.04 Teletherapy is amended by deleting “1200-2-4-.04(1)(xx)” and substituting “paragraph 1200-2-4-.04(1)(pp)”, so that as amended the subparagraph shall read:

Full calibration measurements required by (a) of this paragraph and physical decay corrections required by (d) of this paragraph shall be performed by a qualified expert as defined in paragraph 1200-2-4-.04(1)(pp).

Subparagraph (4)(i) of Rule 1200-2-7-.04 Teletherapy is amended by deleting “1200-2-4-.04(1)(xx)” and substituting “paragraph 1200-2-4-.04(1)(pp)”, so that as amended 1200-2-7-.04(4)(i) shall read:

The licensee shall determine if a person is a qualified expert in accordance with the requirements of paragraph 1200-2-4-.04(1)(pp).

Paragraph (7) of Rule 1200-2-7-.04 Teletherapy is amended by deleting “1200-2-4-.04(1)(xx)” and substituting “paragraph 1200-2-4-.04(1)(pp)”, so that as amended 1200-2-7-.04(7) shall read:

The licensee shall determine in accordance with paragraph 1200-2-4-.04(1)(pp) if a person is an expert qualified by training and experience to calibrate a teletherapy unit, establish procedures for and review the results of spot check measurements.

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

CHAPTER 1200-2-8

RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHY OPERATIONS

Rule 1200-2-8-.07 is amended by deleting subparagraph (1)(b) and paragraphs (8) and (9).

Authority: T.C.A. §§ 4-5-201 et seq., 68-202-203 and 68-202-206.

Subparagraph (3)(a) of Rule 1200-2-8-.10 Required Administrative Procedures for Industrial Radiography Program is amended by deleting the words “three (3)” and substituting the words “six (6)”, so that as amended the subparagraph shall read:

Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed six (6) months;

Authority: T.C.A. §§ 4-5-201 et seq., 68-202-203 and 68-202-206.

Part (1)(a)2. of Rule 1200-2-8-.10 Required Administrative Procedures for Industrial Radiography Program is amended by deleting the words "1200-2-8-.07(1) and (2)" and "1200-2-8-.07(3), (4) and (5)" and substituting the words "1200-2-8-.07(7)(a) and (b)" and "1200-2-8-.07(7)(c), (d) and (e)", so that as amended the part shall read:

Resumes of prior training and experience of individuals that show fulfillment of the requirements of 1200-2-8-.07(7)(a) and (b) and the initial training of such individuals in the licensee's or registrant's specific radiography program as outlined in 1200-2-8-.07(7)(c), (d) and (e);

Authority: T.C.A. §§ 4-5-201 et seq., 68-202-203 and 68-202-206.

The first sentence of paragraph (1) of Rule 1200-2-8-.12 Reporting Requirements is amended by deleting the sentence and substituting the following, so that as amended the first sentence of 1200-2-8-.12(1) shall read:

In addition to the reporting requirements specified in other chapters of these regulations, each licensee or registrant shall provide a written report to the Division at the address in Rule 1200-2-4-.07, within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

Authority: T.C.A. §§ 4-5-201 et seq., 68-202-203 and 68-202-206.

CHAPTER 1200-2-9 REQUIREMENTS FOR ACCELERATORS

Paragraph (2) of Rule 1200-2-9-.17 General Safety Provisions is amended by deleting "1200-2-5-.11" and substituting "1200-2-5-.70 and 1200-2-5-.71", so that as amended the paragraph shall read:

Each registrant shall provide personnel monitoring devices which shall be calibrated for the radiations and energies of radiation produced by the accelerator and shall be used as required by 1200-2-5-.70 and 1200-2-5-.71 of these regulations.

Paragraph (3) of Rule 1200-2-9-.17 General Safety Provisions is amended by deleting "1200-2-5-.03, 1200-2-5-.06, and 1200-2-5-.07" and substituting "1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 and 1200-2-5-.60", so that as amended the paragraph shall read:

Each installation shall be provided with such primary barriers and/or secondary barriers as are necessary to assure compliance with 1200-2-5-.50, 1200-2-5-.55, 1200-2-5-.56 and 1200-2-5-.60 of these regulations.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-202-203 and 206.

Paragraph (2) of Rule 1200-2-9-.20 Tests and Surveys is amended by deleting "1200-2-5-.10" and substituting "1200-2-5-.70", so that as amended the paragraph shall read:

In conjunction with initial operation and after changes have been made in shielding, operating parameters, equipment or occupancy of adjacent areas, make a survey as required in 1200-2-5-.70.

Authority: *T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.*

Subparagraph (2)(g) of Rule 1200-2-9-.21 Therapeutic Accelerator Installations is amended by deleting “1200-2-4-.04(xx)” and substituting “paragraph 1200-2-4-.04(1)(pp)”, so that as amended the 1200-2-9-.21(2)(g) shall read:

Full calibration measurements required by (d) of this paragraph shall be performed by a qualified expert as defined in 1200-2-4-.04(1)(pp).

The first sentence of subparagraph (2)(j) of Rule 1200-2-9-.21 Therapeutic Accelerator Installations is amended by deleting “1200-2-4-.04(xx)” and substituting “paragraph 1200-2-4-.04(1)(pp)”, so that as amended the first sentence of 1200-2-9-.21(2)(j) shall read:

Spot-check measurements required by (h) of this paragraph shall be performed in accordance with procedures established by a qualified expert as defined in 1200-2-4-.04(1)(pp).

Authority: *§§68-202-101 et seq.*

CHAPTER 1200-2-10 LICENSING AND REGISTRATION

Part (2)(b)9. of Rule 1200-2-10-.10 General Licenses⁴ – Radioactive Material Other than Source Material is amended by deleting “1200-2-5-.23 and 1200-2-5-.24” and substituting “1200-2-5-.140 and 1200-2-5-.141”, so that as amended the part shall read:

Shall comply with the provisions of 1200-2-5-.140 and 1200-2-5-.141 for reporting radiation incidents, theft or loss of radioactive material.

Subparagraph (3)(b) of Rule 1200-2-10-.10 General Licenses⁴ – Radioactive Material Other than Source Material is amended by deleting “1200-2-5-.23 and 1200-2-5-.24” and substituting “1200-2-5-.140 and 1200-2-5-.141”, so that as amended the subparagraph shall read:

Persons who own, receive, acquire, possess, or use luminous safety devices pursuant to the general license in (a) of this paragraph (3) are exempt from the requirements of Chapter 1200-2-5, except that they shall comply with the provisions of 1200-2-5-.140 and 1200-2-5-.141.

Part (6)(b)3. of Rule 1200-2-10-.10 General Licenses⁴ – Radioactive Material Other than Source Material is amended by deleting “1200-2-5-.17(1) and 1200-2-5-.23 and 1200-2-5-.24” and substituting “1200-2-5-.120(1), 1200-2-5-.140, and 1200-2-5-.141”, so that as amended the part shall read:

Are exempt from the requirements of Chapter 1200-2-5 of these regulations except such that persons shall comply with the provisions of 1200-2-5-.120(1), 1200-2-5-.140, and 1200-2-5-.141.

Part (7)(c)5. of Rule 1200-2-10-.10 General Licenses⁴ – Radioactive Material Other than Source Material is amended by deleting “1200-2-5-.17 “ and substituting “1200-2-5-.120”, so that as amended the part shall read:

The general licensee shall dispose of the Mock Iodine 125 reference or calibration sources described in (a) of this paragraph (7) as required by 1200-2-5-.120.

Subparagraph (7)(e) of Rule 1200-2-10-.10 General Licenses⁴ Radioactive Material other than Source Material is amended by deleting the subparagraph and substituting the following, so that as amended 1200-2-10-.10(7)(e) shall read:

Licenseses possessing or using radioactive materials under this general license shall report in writing to the Division, at the address in Rule 1200-2-4-.07, any changes in information furnished in the application submitted under subparagraph 1200-2-10-.10(7)(b). The report shall be furnished within 30 days after the effective date of such change.

Subparagraph (7)(f) of Rule 1200-2-10-.10 General Licenses⁴ – Radioactive Material Other than Source Material is amended by deleting “1200-2-5-.17, 1200-2-5-.23, and 1200-2-5-.24” and substituting “1200-2-5-.120, 1200-2-5-.140, and 1200-2-5-.141”, so that as amended the subparagraph shall read:

Any person using radioactive material pursuant to this general license is exempt from the requirements of Chapter 1200-2-5 with respect to radioactive materials covered by this general license, except such persons using the Mock Iodine 125 described in part (a)⁸ shall comply with the provisions of 1200-2-5-.120, 1200-2-5-.140, and 1200-2-5-.141.

Authority: *T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.*

Part (5)(a)2. of Rule 1200-2-10-.13 Special Requirements for Issuance of Specific Licenses is amended by deleting “1200-2-5-.03(1)” and substituting “1200-2-5-.50”, so that as amended the part shall read:

Under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and no person will receive in any period of one calendar quarter a dose in excess of 10 percent of the limits specified in 1200-2-5-.50; and

The last sentence of subparagraph (5)(d) of Rule 1200-2-10-.13 Special Requirements for Issuance of Specific Licenses is amended by deleting “1200-2-5-.03(1)” and substituting “1200-2-5-.50”, so that as amended the sentence shall read:

The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, will not cause that individual to receive a calendar quarter dose in excess of 10 percent of the limits specified in 1200-2-5-.50;

Part (5)(f)1. of Rule 1200-2-10-.13 Special Requirements for Issuance of Specific Licenses is amended by deleting the part and substituting the following, so that as amended 1200-2-10-.13(5)(f)1 shall read:

Report to the Division, at its office located at the address in Rule 1200-2-4-.07, all transfers of such devices to persons for use under the general license in paragraph 1200-2-10-.10(2).

Subpart (6)(a)1.(ii) of Rule 1200-2-10-.13 Special Requirements for Issuance of Specific Licenses is amended by deleting the words “1200-2-8-.07(1) and (2)” and “1200-2-8-.07(3), (4) and (5)” and substituting the words “1200-2-8-.07(7)(a) and (b)” and “1200-2-8-.07(7)(c), (d) and (e)”, so that as amended the subpart shall read:

Resumes of prior training and experience of individuals which show fulfillment of the requirements of 1200-2-8-.07(7)(a) and (b) and the program for the initial training of such individuals in the licensee’s or registrant’s specific industrial radiography program as outlined in 1200-2-8-.07(7)(c), (d) and (e);

The last sentence of subparagraph (13)(d) of Rule 1200–2–10–.13 Special Requirements for Issuance of Specific Licenses is amended by deleting “1200–2–5–.17” and substituting “1200–2–5–.120”, so that as amended the sentence shall read:

In the case of the Mock Iodine 125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in 1200–2–5–.120.

Parts (17)(a)1., (b)1. and (c)1. of Rule 1200–2–10–.13 Special Requirements for Issuance of Specific Licenses is amended by deleting the words “, by July 1, 1993,”, so that as amended the parts shall read:

- (17) (a) 1. In addition to the requirements set forth in 1200–2–10–.12, all specific licenses issued, or for which an initial application or an application to amend is submitted, to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Table RHS 7–2 must contain either:
 - (b) 1. In addition to the requirements set forth in 1200–2–10–.12, all specific licenses to possess uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total must contain either:
 - (c) 1. In addition to the requirements set forth in 1200–2–2–.12, all specific licenses to possess plutonium in excess of 2 curies in unsealed form or on foils or plated sources must contain either:

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

The last sentence of subpart (2)(c)2.(iii) of Rule 1200–2–10–.14 Specific Licenses for Certain Groups of Medical Uses of Radioactive Material is amended by deleting the sentence and substituting the following, so that as amended the sentence shall read:

A report shall be filed with the Division, at the address in Rule 1200–2–4–.07, within five (5) days of the test; the report shall describe the equipment involved, the test results and the corrective action taken;

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

Subparagraph (7)(a) of Rule 1200–2–10–.16 Specific Terms and Conditions of Licenses is amended by deleting the subparagraph and substituting the following, so that as amended 1200–2–10–.16(7)(a) shall read:

Provide the Division written notification, at the address in Rule 1200–2–4–.07, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code (U.S.C.):

Authority: T.C.A. §§4–5–202. et seq., 68–202–101 et seq. and 68–202–206.

Paragraphs (1) and (2) and the rule title of Rule 1200–2–10–.24 Registration are amended by deleting the paragraphs and title and substituting the following, so that as amended the paragraphs and title shall read:

1200–2–10–.24 X-RAY REGISTRATION AND X-RAY REGISTRATION FEES.

(1) Registration:

- (a) Each person who receives ownership or possession of any radiation machine shall register. Registration is not required for ownership or possession of any radiation machine specifically excluded by Rule 1200-2-10-.07.
 - 1. Each person who receives ownership or possession of any radiation machine other than an accelerator shall register within ten (10) days of receipt.
 - 2. Each person who receives ownership or possession of any accelerator shall submit an application for a certified registration, as required in Chapter 1200-2-9, within ten (10) days of acquisition of the accelerator.
 - (i) An accelerator shall not be energized until the Division issues the certified registration.
 - (ii) The Division may grant approval for testing of an accelerator before issuance of the certified registration.
- (b) Each person who provides inspection services under paragraph 1200-2-10-.27(4) shall register.
- (c) Each person who assembles, installs or services radiation machines shall register.
- (d) Registration shall be with the Division of Radiological Health on forms supplied by the Division. Forms may be obtained from the Division at the address given in Rule 1200-2-4-.07.
- (e) Whenever information, such as equipment possessed, address, ownership, possessor or location of use, changes from that declared on the current registration, each registrant shall complete a new registration form within ten (10) days of the change.
- (f) Each registrant, or his estate, who permanently discontinues the use of or transfers all of his radiation machines at an installation shall notify the Division in writing within 60 days of such action. In the case of a transfer, the notification shall include the name and address of the transferee.
- (g) No person shall state or imply that the Division has approved any activity conducted under a registration.

(2) Fee payment procedures:

- (a) Annual registration fee. Except as set out in parts 1-4 below, persons subject to registration who own, possess, inspect, assemble, install or service radiation machines as of any January 1, shall pay an annual registration fee to the Division of Radiological Health, by check made payable to "Treasurer, State of Tennessee" at the address indicated on the invoice. The fee invoice will be dated January 17. The fee shall be due March 17. The fee amount shall be as set out in the classification and fee schedule in paragraph (3) of this rule.
 - 1. For persons who receive ownership or possession of a radiation machine after any January 1, this fee shall be due initially as follows:

For a radiation machine first received, or a certified registration first issued, during the months of: The fee shall be due the following:

January, February, March	July 17
April, May, June	October 17
July, August, September	January 17
October, November, December	April 17

2. For persons who begin providing inspection services under paragraph 1200–2–10–.27(4) after any January 1, this fee shall be due initially before review of the application to perform such services. Inspection services shall not be performed until the Division has approved the application.
 3. For persons who begin providing assembly/installation/servicing of radiation machines after any January 1, this fee shall be due initially before performance of such services.
 4. A staff inspector or staff assembler/installer/servicer is not subject to the annual registration fee. A staff inspector/assembler/installer/servicer is on the staff of and only provides services for a facility registered under these regulations and Tennessee Code Annotated (T.C.A.) 68–202–101 et seq.
- (b) Reserved.
- (c) Initial review fee for certified registration application. Persons submitting an application for a certified registration shall pay an initial review fee. The fee amount shall be as set out in the classification and fee schedule below in paragraph (3), and is not refundable, except as specified in T.C.A. 68–203–101 et seq.
- (d) Reserved.
- (e) All fees due under this rule shall be payable to “Treasurer, State of Tennessee” at the address given on the invoice.
- (f) A properly completed copy of the fee invoice shall accompany each payment.
- (g) Any failure to pay an invoiced amount by the date specified on the invoice, unless qualified by part 1200–2–10–.24(3)(d), shall be deemed a violation of T.C.A. §68–203–101 et seq.
1. If any part of any fee imposed under this rule is not paid within fifteen (15) days of the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto.
 2. Fees not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate from the due date to the date paid.
 3. Returned checks, returned for any reason including but not limited to insufficient funds or account closed, constitute failure to pay until the date the Division receives the funds.
 4. Returned checks are subject to an additional handling charge as established in Tennessee Department of Finance and Administration rule or policy.

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

(h) At the time of payment, a person possessing only Class II radiation machines may request specific times or list restricted hours for inspections by personnel of the Division under Rule 1200-2-10-.27. Specific times requested shall be during normal working hours.

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

Part (1)(a)3. of Rule 1200-2-10-.27 Inspections is amended by deleting “1200-2-5-.14(2)” and substituting “1200-2-5-.108 and 1200-2-5-.109”, so that as amended the part shall read:

The provisions of 1200-2-10-.27(1)(a)1. shall not be interpreted as authorization to disregard instructions pursuant to 1200-2-5-.108 and 1200-2-5-.109.

Part (1)(b)2. of Rule 1200-2-10-.27 Inspections is amended by deleting “1200-2-5-.14(2)” and substituting “1200-2-5-.108 and 1200-2-5-.109”, so that as amended the part shall read:

Any worker’s representative shall be an employee of the licensee or registrant and should be a worker as defined in 1200-2-4-.04(w) and shall have received instructions as specified in 1200-2-5-.108 and 1200-2-5-.109.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

The last sentence of subparagraph (1)(b) of Rule 1200-2-10-.30 Transportation of Radioactive Material is amended by deleting the sentence and substituting the following, so that as amended the sentence shall read:

Any notification referred to in these regulations shall be filed with or made to the Division at the address in Rule 1200-2-4-.07.

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

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

(4) Annual maintenance fees.

(a) Fee amounts for annual maintenance fees shall be as set out in the fee schedule in paragraphs 1200-2-10-.31(6) through (19).

(b) Annual maintenance fees are paid to the Division, due 60 days after the invoice date, by check made payable to “Treasurer, State of Tennessee” at the address indicated on the invoice, until the license is terminated in accordance with part (d)1. below.

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

1. If any part of any fee imposed under this rule is not paid within fifteen (15) days of the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added

thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto.

2. Fees not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate from the due date to the date paid.
 3. Returned checks, returned for any reason including but not limited to insufficient funds or account closed, constitute failure to pay until the date the Division receives the funds.
 4. Returned checks are subject to an additional handling charge as established in Tennessee Department of Finance and Administration rule or policy.
 5. Where a licensee has given timely notice of a change of address but an invoice is mailed to an incorrect mailing address, the Division will extend the due date until the Division resolves the situation.
- (d) Annual maintenance fees are payable until the license is terminated by the Division.
1. Provided that the licensee has demonstrated to the satisfaction of the Division that all of the requirements concerning disposal of radioactive material and the decontamination of facilities are met, the termination of the license is administratively accomplished by using one of the following:
 - (i) As requested in writing by the licensee;
 - (ii) By the Division, for cause, or
 - (iii) In accordance with these regulations.
 2. The failure to acquire radioactive material or the disposal of radioactive material without notifying the Division and requesting termination in writing does not constitute termination of a license.

Authority: *T.C.A. §§4-5-201 et seq., 68-202-201 et seq., 68-202-206 et seq. and 68-203-101 et seq.,*

The second sentence of subparagraph (4)(a) of Rule 1200-2-10-.32 Licensing of Shippers of Radioactive Material into or within Tennessee is amended by deleting the sentence and substituting the following, so that as amended the sentence shall read:

An application for a license for delivery shall be submitted on Division Form RHS-30 together with any necessary fee to the Division at the address in Rule 1200-2-4-.07.

Part (4)(b)2. of Rule 1200-2-10-.32 Licensing of Shippers of Radioactive Material into or Within Tennessee is amended by deleting "1200-2-5-.32(4)(b)" and substituting "1200-2-10-.32(4)(b)", so that as amended the part shall read:

Any insurance carried pursuant to Section 2210 of Title 42 of the United States Code and U.S. NRC Regulations (10 CFR Part 140) of November 30, 1988, as amended shall be sufficient to meet the requirements of 1200-2-10-.32(4)(b).

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

**CHAPTER 1200-2-11
LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE**

Rule 1200-2-11-.05 Communications is amended by deleting the rule and substituting the following, so that as amended the rule shall read:

Except where otherwise specified, all communications and reports concerning the regulations in this chapter and applications filed under them should be addressed to the Division at the address in Rule 1200-2-4-.07.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-206.

Subparagraph (3)(f) of Rule 1200-2-11-.17 Technical Requirements for Land Disposal Facilities is amended by deleting “1200-2-5-.07” and substituting “1200-2-5-.60”, so that as amended the subparagraph shall read:

Waste must be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of 1200-2-5-.60 at the time the license is transferred pursuant to 1200-2-11-.14.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

**CHAPTER 1200-2-12
RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING**

Rule 1200-2-12-.04 Registration or Application for a License is amended by deleting the rule and substituting the following, so that as amended the rule shall read:

A person, as defined in Chapter 1200-2-5, shall file an application for a license authorizing the use of radioactive material in well logging or register radiation producing machines for use in well logging with the Division at the address in Rule 1200-2-4-.07.

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

Subpart (1)(e)3.(ii) of Rule 1200-2-12-.06 Agreement with Well Owner or Operator is amended by deleting “1200-2-5-.12(1)(a)” and substituting “1200-2-5-.110(1)”, so that as amended the subpart shall read:

The radiation symbol (the color requirement in 1200-2-5-.110(1) need not be met);

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

The last sentence of subparagraph (1)(a) of Rule 1200-2-12-.07 Labels, Security, and Transportation Precautions is amended by deleting “1200-2-5-.12(1)” and substituting “1200-2-5-.110(1)”, so that as amended the sentence shall read:

The marking or label must contain the radiation symbol specified in 1200-2-5-.110(1) without the conventional color requirements, and the wording "DANGER (or CAUTION) RADIOACTIVE MATERIAL."

The last sentence of subparagraph (1)(b) of Rule 1200-2-12-.07 Labels, Security, and Transportation Precautions is amended by deleting "1200-2-5-.12(1)" and substituting "1200-2-5-.110(1)", so that as amended the sentence shall read:

The label must contain the radiation symbol specified in 1200-2-5-.110(1) and the wording "CAUTION (or DANGER), RADIOACTIVE MATERIAL, NOTIFY CIVIL AUTHORITIES (or NAME OF COMPANY)."

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

The last sentence of paragraph (1) of Rule 1200-2-12-.08 Radiation Detection Instruments is deleted, so that as amended paragraph (1) shall read:

The licensee or registrant shall keep a calibrated and operable radiation survey instrument capable of detecting, as appropriate, beta, gamma and x-ray radiation at each field station and temporary job-site to make the radiation surveys required by this Chapter and by Chapter 1200-2-5. To satisfy this requirement, the radiation survey instrument must be capable of measuring 0.1 milliroentgen (2.58×10^{-8} C/kg) per hour through at least 50 milliroentgens (1.29×10^{-5} C/kg) per hour.

Authority: T.C.A. §68-202-101 et seq.

The first sentence of subparagraph (4)(b) of Rule 1200-2-12-.09 Leak Testing of Sealed Sources is amended by deleting the sentence and substituting the following, so that as amended the sentence shall read:

Licensees shall submit written reports to the Division, at the address in Rule 1200-2-4-.07, within five (5) days of receiving the test results.

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

Rule 1200-2-12-.15 Radioactive Markers is amended by deleting the words " Schedule RHS 8-2, Chapter 1200-2-5" and substituting the words " Schedule RHS 8-31, Rule 1200-2-5-.161", so that as amended the rule shall read:

The licensee may use radioactive markers in wells only if the individual markers contain quantities of radioactive material not exceeding the quantities specified in Schedule RHS 8-31, Rule 1200-2-5-.161.

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

Paragraph (8) of Rule 1200-2-12-.19 Operating and Emergency Procedures is amended by deleting "1200-2-5-.16" and substituting "1200-2-5-.115", so that as amended the paragraph shall read:

Picking up, receiving, and opening packages containing radioactive materials, in accordance with 1200-2-5-.115;

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Paragraph (2) of Rule 1200-2-12-.26 Notification of Incidents and Lost Sources; Abandonment Procedures for Irretrievable Sources is amended by deleting “1200-2-5-.23, 1200-2-5-.24 and 1200-2-5-.26.” and substituting “1200-2-5-.140, 1200-2-5-.141 and 1200-2-5-.143.”, so that as amended the paragraph shall read:

The licensee or registrant shall notify the Division of Radiological Health of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 1200-2-5-.140, 1200-2-5-.141 and 1200-2-5-.143.

The first sentence of paragraph (4) of Rule 1200-2-12-.26 Notification of Incidents and Lost Sources; Abandonment Procedures for Irretrievable Sources is amended by deleting the sentence and substituting the following, so that as amended the sentence shall read:

Within 30 days after a sealed source has been classified as irretrievable, licensees shall make a written report to the Division at the address in Rule 1200-2-4-.07.

Authority: *T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.*

REPEALS

Rules 1200-2-5-.01 through 1200-2-5-.29 are repealed.

OTHER INFORMATION

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Barbara A. Davis at the Division of Radiological Health, Central Office, address below, prior to or following the public hearing. However, the Division must receive such written comments in its Central Office by 4:30 p.m. (CST), February 28, 2003, in order to assure consideration.

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

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

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

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

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

Copies are available for review also at the Division of Radiological Health, Central Office:
Division of Radiological Health
L & C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532
(615)532-0364

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of December, 2002. (12-29)

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

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments pursuant to T.C.A. 68-202-101 et seq. and 68-202-201 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 17th Floor Conference Room of the L & C Tower located at 401 Church Street, Nashville, Tennessee, at 1:00 p.m. (CST), on the 19th day of February, 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 made in person, by writing, telephone or other means and should be made no less than ten (10) days prior to February 19, 2003, or ten (10) days prior to the date such party intends to review such filings, to allow time for the Department to determine how it may reasonably provide such aids or services. Contact the Tennessee Department of Environment and Conservation, John White, ADA Coordinator, L & C Annex, Seventh Floor; 401 Church Street, Nashville, TN 37243; (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

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

NEW RULES

CHAPTER 1200-2-12 RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

TABLE OF CONTENTS

1200-2-12-.27 Energy Compensation Source

1200-2-12-.28 Tritium Neutron Generator Target Source

1200-2-12-.27 ENERGY COMPENSATION SOURCE.

- (1) The licensee may use an energy compensation source (ECS) which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 100 micro-curies (3.7 MBq).
 - (a) For well logging with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Rules 1200-2-12-.09, .10 and .11.
 - (b) For well logging without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Rules 1200-2-12-.06, .09, .10, .11, .17 and .26.

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

1200-2-12-.28 TRITIUM NEUTRON GENERATOR TARGET SOURCE.

- (1) Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (1,110 MBq) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this Chapter except Rules 1200-2-12-.06, .12, and .26.
- (2) Use of a tritium neutron generator target source, containing quantities exceeding 30 curies (1,110 MBq) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this Chapter except Rule 1200-2-12-.12.

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

AMENDMENTS

Paragraphs (31) through (39) of Rule 1200-2-5-.32 Definitions are re-numbered; paragraphs (16), (34), (37) and (72) are amended. Paragraph (16) is amended by adding the words “ The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.” at the end. Paragraphs (34) and (72) are amended by adding the words, “ from radiation sources external to the body” after the word “levels”. Paragraph (37) is amended by replacing the word “thermoluminescent” with the word “thermoluminescence”. Paragraphs (81) through (101) are added. As amended 1200-2-5-.32(16), (31) through (39), (72), and (81) through (101) shall read:

- (16) *Declared pregnant woman* means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

- (31) *Generally applicable environmental radiation standards* means standards issued by the Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.
- (32) *Government agency* means any executive department, commission, independent establishment, corporation wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.
- (33) *Gray* (See 1200–2–5–.33(1)(a)).
- (34) *High radiation area* means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.
- (35) *Individual* means any human being.
- (36) *Individual monitoring* means:
- (a) The assessment of dose equivalent by the use of devices designed to be worn by an individual;
 - (b) The assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or
 - (c) The assessment of dose equivalent by the use of survey data.
- (37) *Individual monitoring devices* (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent, such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal (“lapel”) air sampling devices.
- (38) *Internal dose* means that portion of the dose equivalent received from radioactive material taken into the body.
- (39) *Lens dose equivalent* applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).
- (72) *Very high radiation area* means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a source of radiation or from any surface that the radiation penetrates.
- (Note: At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts)).
- (81) *Air-purifying respirator* means a respirator with an air-purifying filter, cartridge or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

- (82) *Assigned protection factor (APF)* means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.
- (83) *Atmosphere-supplying respirator* means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.
- (84) *Demand respirator* means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.
- (85) *Disposable respirator* means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).
- (86) *Filtering facepiece (dust mask)* means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.
- (87) *Fit factor* means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.
- (88) *Fit test* means the use of a protocol to evaluate qualitatively or quantitatively the fit of a respirator on an individual.
- (89) *Helmet* means a rigid respiratory inlet covering that also provides head protection against impact and penetration.
- (90) *Hood* means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.
- (91) *Loose-fitting facepiece* means a respiratory inlet covering that is designed to form a partial seal with the face.
- (92) *Negative pressure respirator (tight fitting)* means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.
- (93) *Positive pressure respirator* means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.
- (94) *Powered air-purifying respirator (PAPR)* means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.
- (95) *Pressure demand respirator* means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.
- (96) *Qualitative fit test (QLFT)* means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

- (97) *Quantitative fit test (QNFT)* means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.
- (98) *Self-contained breathing apparatus (SCBA)* means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.
- (99) *Supplied-air respirator (SAR)* or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.
- (100) *Tight-fitting facepiece* means a respiratory inlet covering that forms a complete seal with the face.
- (101) *User seal check (fit check)* means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check or isoamyl acetate check.

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Subparagraph (1)(b) of Rule 1200–2–5–.54 Planned Special Exposures is amended by replacing the word “higher” with the words “dose estimated to result from the planned special”, so that as amended the subparagraph shall read:

The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical.

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Paragraphs (1), (3) and (4), subparagraph (3)(b) and the title of Rule 1200–2–5–.56 Dose to an Embryo/Fetus are amended by changing the word “dose” to “dose equivalent”, so that as amended the paragraphs, subparagraphs and rule title shall read:

1200–2–5–.56 DOSE EQUIVALENT TO AN EMBRYO/FETUS.

- (1) The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). (For record keeping requirements, see 1200–2–5–.135).
- (3) The dose equivalent to an embryo/fetus shall be taken as the sum of:
- (b) The dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.
- (4) If when a woman declares her pregnancy to the licensee or registrant the dose equivalent to the embryo/fetus is found to be 0.45 rem (4.5 mSv) or greater, the embryo/fetus is permitted an additional dose equivalent not exceeding 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Parts (1)(b)1. and 3. of Rule 1200–2–5–.70 General Survey and Monitoring Requirements are amended by adding the words “magnitude and “ before the word “extent” in part 1. and deleting the words “ that could be present” from 3., so that as amended the parts shall read:

- (1) (b) Are reasonable under the circumstances to evaluate:
 - 1. The magnitude and extent of radiation levels;
 - 3. The potential radiological hazards.

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Part (1)(a)3. of Rule 1200–2–5–.71 Conditions Requiring Individual Monitoring of External and Internal Occupational Dose is re-numbered, a new part (1)(a)3. and subparagraph (2)(c) are added, part (1)(a)2. and subparagraphs (1)(a) and (2)(b) are deleted and replaced with the following, so that as amended 1200–2–5–.71(1)(a), (1)(a)2., (1)(a)3., (1)(a)4. and (2)(a) through (c) shall read:

- (1) (a) Each licensee and registrant shall monitor occupational exposure to radiation from licensed or unlicensed and registered or unregistered radiation sources under the control of the licensee and registrant and shall supply and require the use of individual monitoring devices by:
 - 2. Minors likely to receive, in 1 year from radiation sources external to the body, a deep dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of 0.5 rem (5 mSv)
 - 3. Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv 1); and
 - 4. Individuals entering a high or very high radiation area.
- (2) (a) Adults likely to receive, in one (1) year, an intake in excess of 10 percent of the applicable ALI(s) in Table 1, Columns 1 and 2, of Schedule RHS 8–30;
- (b) Minors likely to receive, in one (1) year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and.
- (c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Rule 1200–2–5–.90 Use of Process or Other Engineering Controls is amended by adding the text “, decontamination” after the word “containment”, so that as amended the rule shall read:

The licensee shall use, to the extent practicable, process or other engineering controls (e.g., containment, decontamination or ventilation) to control the concentrations of radioactive material in air.

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Rule 1200-2-5-.91 Use of Other Controls is amended by adding paragraph (2), which shall read:

- (2) If the licensee performs an ALARA analysis to determine whether respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee should also consider the impact of respirator use on workers' industrial health and safety.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Paragraphs (1) and (2) of Rule 1200-2-5-.92 Use of Individual Respiratory Protection Equipment are amended by deleting the paragraphs and substituting the following, so that as amended the paragraphs shall read:

- (1) If the licensee assigns or permits the use of respiratory protection equipment to limit intakes pursuant to 1200-2-5-.91:
 - (a) The licensee shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA), except as otherwise noted in this Chapter.
 - (b) A licensee desiring to use equipment that has not been tested or certified by NIOSH, or for which there is no schedule for testing or certification, shall apply for authorization except as provided in this Chapter. The application shall demonstrate by licensee testing or on the basis of reliable test information, that the equipment's material and performance characteristics provide protection equivalent to that of the equipment in (1)(a) of this rule under anticipated conditions of use.
 - (c) The licensee shall implement and maintain a respiratory protection program that includes:
 1. Air sampling sufficient to identify the potential hazard, permit proper equipment selection and estimate doses;
 2. Surveys and bioassays, as appropriate, to evaluate actual intakes;
 3. Testing of respirators for operability (user seal check for face sealing devices and functional check for other) immediately before each use;
 4. Written procedures regarding:
 - (i) Respirator selection,
 - (ii) Fit testing,
 - (iii) Storage, issuance, maintenance, repair, testing and quality assurance of respiratory protection equipment, including testing for operability immediately before each use;
 - (iv) Supervision and training of respirator users;
 - (v) Monitoring, including air sampling and bioassays;
 - (vi) Breathing air quality;

- (vii) Inventory and control;
 - (viii) Record keeping; and
 - (ix) Limitations on periods of respirator use and relief from respirator use;
5. Determination by a physician that the individual user is medically fit to use the respiratory protection equipment before:
- (i) The initial fitting of a face-sealing respirator;
 - (ii) The first field use of non-face sealing respirators; and
 - (iii) Either every 12 months thereafter or periodically at a frequency determined by a physician.;
6. Fit testing, with fit factor ≥ 10 times the APF for negative pressure devices, and a fit factor ≥ 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. Fit testing must be performed with the facepiece operating in the negative pressure mode.
- (d) The licensee shall issue a written policy statement on respirator usage covering:
- 1. The use of process or other engineering controls, instead of respirators;
 - 2. The routine, non-routine and emergency use of respirators; and
 - 3. The periods of respirator use and relief from respirator use.
- (e) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions or any other conditions that might require such relief.
- (f) The licensee's use of the equipment shall not exceed the equipment's specifications. The licensee shall provide proper visual, communication and other special capabilities (such as adequate skin protection) when needed.
- (e) The licensee shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.
- (f) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone,

radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

- (g) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (29 CFR 1910.134(i)(1)(ii)(A) through (E). Grade D quality air criteria include—
 1. Oxygen content (v/v) of 19.5-23.5%;
 2. Hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
 3. Carbon monoxide (CO) content of 10 ppm or less;
 4. Carbon dioxide content of 1,000 ppm or less; and
 5. Lack of noticeable odor.
 - (h) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face—facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.
 - (i) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value shall be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.
- (2) In estimating an individual's exposure to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit intakes pursuant to 1200-2-5-.91. To make such an allowance the following conditions, in addition to those in 1200-2-5-.92(1) shall be satisfied:
- (a) The licensee selects respiratory protection equipment that provides a protection factor (see Schedule RHS 8-32) greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Schedule RHS 8-30, Table 1, Column 3. If the selection of a respiratory protection device with a protection factor greater than the peak concentrations is inconsistent with the goal specified in 1200-2-5-.91 of keeping the total effective dose equivalent ALARA, the licensee may select respiratory protection equipment with a lower protection factor only if such a selection would result in keeping the total effective dose equivalent ALARA. The concentration of radioactive material inhaled when respirators are used may be initially estimated by dividing the average concentration in air, during each period of uninterrupted respirator use, by the protection factor. If the exposure is later found to exceed the estimate, the corrected value shall be used; if the exposure is later found to be less than the estimate, the corrected value may be used.

- (b) The licensee shall obtain authorization from the Division before assigning respiratory protection factors in excess of those specified in Schedule RHS 8-32. The Division may authorize a licensee to use higher protection factors on receipt of an application that:
 - 1. Describes the situation for which a need exists for higher protection factors; and
 - 2. Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.
- (c) The licensee shall use as emergency devices only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH/MSHA.
- (d) The licensee shall notify, in writing, the Division at least 30 days before the date that respiratory protection equipment is first used under the provisions of either 1200-2-5-.92(1) or (2).

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Subparagraph (1)(a) of Rule 1200-2-5-.93 Further Restrictions on the Use of Respiratory Protection Equipment is amended by deleting the subparagraph and substituting the following, so that as amended the subparagraph shall read:

- (1) (a) Ensure that the respiratory protection program of the licensee is adequate to limit doses of individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Rule 1200-2-5-.111 Posting Requirements is amended by the addition of paragraph (12), which shall read:

- (a) Access to the room is controlled pursuant to Rule 1200-2-7-.04; and
- (b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in these basic standards.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Paragraphs (2) and (3) of Rule 1200-2-5-.130 General Records Provisions are re-numbered and a new paragraph (2) is added, so that as amended 1200-2-5-.130(2) through (4) shall read:

- (2) In the records required by this part, the licensee may record quantities in SI units in parentheses following each of the units specified in paragraph (1). However, all quantities must be recorded as stated in paragraph (1).
- (3) Notwithstanding the requirements above in paragraph (1), when recording information on shipment manifests, as required in paragraph 1200-2-5-.125(2), information shall be recorded in the International System of Units (SI) or in SI and units as specified in paragraph (1).
- (4) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this Chapter (e.g., total effective dose equivalent, shallow-dose

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Subparagraphs (2)(a) through (d) of Rule 1200–2–5–.135 Records of Individual Monitoring Results are amended. Subparagraph (a) is amended by removing the word “and”; subparagraphs (b) and (c) are amended by removing the words “or body burden”; subparagraph (d) is amended by replacing the word “calculate” with the word “assess” and adding the words “ and when required by 1200–2–5–.71” at the end, so that as amended the subparagraphs shall read:

- (2) (a) The deep–dose equivalent to the whole body, lens–dose equivalent, shallow–dose equivalent to the skin and shallow–dose equivalent to the extremities;
- (b) The estimated intake of radionuclides (see 1200–2–5–.51);
- (c) The committed effective dose equivalent assigned to the intake of radionuclides;
- (d) The specific information used to assess the committed effective dose equivalent pursuant to 1200–2–5–.53(3); and when required by 1200–2–5–.71;

Authority: T.C.A. §§4–5–201 et seq. and 68–202–203 and 206.

Schedule RHS 8–32 of Rule 1200–2–5–.161 is amended by deleting the schedule and substituting the following, so that as amended the schedule shall read:

SCHEDULE RHS 8–32 ASSIGNED PROTECTION FACTORS FOR RESPIRATORS ^a

Assigned Protection Factors	Operating Mode ³	
I.	Air–Purifying Respirators [Particulate ^b only] ^c :	
Filtering facepiece disposable ^d	Negative Pressure	(^d)
Facepiece, half ^e	Negative Pressure	10
Facepiece, full	Negative Pressure	100
Facepiece, half	Powered air–purifying respirators	50
Facepiece, full	Powered air–purifying respirators	1000
Helmet/hood	Powered air–purifying respirators	1000
Facepiece, loose–fitting	Powered air–purifying respirators	25
II.	Atmosphere–Supplying Respirators [Particulate, gases and vapors ^f]:	
1.	Air–line respirator:	
Facepiece, half	Demand	10
Facepiece, half	Continuous Flow	50
Facepiece, half	Pressure Demand	50
Facepiece, full	Demand	100
Facepiece, full	Continuous Flow	1000
Facepiece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Facepiece, loose–fitting	Continuous Flow	25
Suit	Continuous Flow	(^g)
2.	Self–contained breathing apparatus (SCBA):	
Facepiece, full	Demand	^h 100

	Facepiece, full	Pressure Demand	ⁱ 10,000
	Facepiece, full	Demand, Recirculating	^h 100
	Facepiece, full	Positive Pressure Recirculating	ⁱ 10,000
III.	Any combination of air-purifying and atmosphere-supplying respirators	Combination Respirators	
		Assigned protection factor for type and mode of operation as listed above	

- a These assigned protection factors apply only in a respiratory protection program that meets the requirements of this Chapter. They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances must also comply with U. S. Department of Labor regulations. Radioactive contaminants for which the concentration values in Table 1, Column 3 of schedule RHS 8-32 in Rule 1200-2-5-.161 are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.
- b Air purifying respirators with APF <100 shall be equipped with particulate filters that are at least 95 percent (95%) efficient. Air purifying respirators with APF = 100 shall be equipped with particulate filters that are at least 99 percent (99%) efficient. Air purifying respirators with APFs >100 shall be equipped with particulate filters that are at least 99.97 percent (99.97%) efficient.
- c The licensee may apply to the Division for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).
- d Licensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in Rule 1200-2-5-.92 apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.
- e Under-chin type only. No distinction is made in this Schedule between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95 percent (95%) efficient and all other requirements of this Chapter are met.
- f The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.
- g No NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met (i.e., Rule 1200-2-5-.92).
- h The licensee should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).
- i This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Paragraphs (8) and (9) of Rule 1200-2-7-.04 Teletherapy are re-numbered and new paragraphs (8) and (9) are added; so that as amended, 1200-2-7-.04(8), (9), (10) and (11) shall read:

- (8) Radiation surveys for teletherapy facilities.
 - (a) Before medical use and after each installation of a teletherapy source, the licensee shall perform radiation surveys with a portable radiation measurement survey instrument calibrated in accordance with paragraph (5) to verify that:
 1. The maximum and average dose rates at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 10 millirem per hour and 2 millirem per hour, respectively; and
 2. With the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:
 - (i) Radiation dose rates in restricted areas are not likely to cause any occupationally exposed individual to receive a dose in excess of the limits specified in Rule 1200-2-5-.50; and
 - (ii) Radiation dose rates in controlled or unrestricted areas are not likely to cause any individual member of the public to receive a dose in excess of the limits specified in Rule 1200-2-5-.60.
 - (b) If the results of the surveys required in subparagraph (a) of this paragraph indicate any radiation dose quantity per unit time in excess of the respective limit specified in that subparagraph, the licensee shall lock the control in the off position and not use the unit:
 1. Except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding; or
 2. Until the licensee has received a specific exemption pursuant to Rule 1200-2-5-.60
 - (c) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record must include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.
- (9) Modification of teletherapy unit or room before beginning a treatment program.
 - (a) If the survey required by paragraph (8) indicates that any individual member of the public is likely to receive a dose in excess of the limits specified in 1200-2-5-.60, the licensee shall, before beginning the treatment program:
 1. Either equip the unit with stops or add additional radiation shielding to ensure compliance with 1200-2-5-.60.

2. Perform the survey required by paragraph (8) again; and
 3. Maintain records of the results of the initial survey, a description of the modification made to comply with part (a)1., and the results of the second survey, in accordance with paragraph (11).
- (b) As an alternative to the requirements set out in subparagraph (a) of this paragraph, a licensee may request a license amendment under 1200—5—.60(2) that authorizes radiation levels in unrestricted areas greater than those permitted by 1200—2—5—.60(1). A licensee may not begin the treatment program until the license amendment has been issued.
- (10) Monitor and survey instruments.
- (a) Each licensee authorized to use teletherapy units for treating humans shall install a permanent radiation monitor in each teletherapy room for continuous monitoring of beam status.
 - (b) Each radiation monitor must be capable of providing visible notice of a teletherapy unit malfunction that may result in an exposed or partially exposed source. The visible indicator of high radiation levels must be located to be observable by a person entering the treatment room
 - (c) Each radiation monitor must be equipped with an emergency power supply separate from the power supply to the teletherapy unit. This emergency power supply may be a battery system.
 - (d) Each radiation monitor must be tested for proper operation each day before the teletherapy unit is used for treatment of patients.
 - (e) If a radiation monitor is inoperable for any reason, any person entering the teletherapy room shall use a properly operating portable survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may have resulted in an exposed or partially exposed source. Survey instruments or dosimeters must be tested daily before use.
- (11) Records. The licensee shall maintain, for inspection by the Division, records of the measurements, tests, corrective actions, inspection and servicing of the teletherapy unit, surveys, instrument calibrations and records of licensee's evaluation of the qualified expert's training and experience made under 1200—2—7—.04(4), (5), (7), (8) or (9), as applicable.

Authority: T.C.A. §§4—5—201 et seq. and 68—202—203 and 206.

Paragraph (5) of Rule 1200—2—8—.05 Personal Radiation Safety Requirements for Radiographers and Radiographer's Assistants is amended by adding subparagraph (a), which shall read:

- (a) The minimum qualifications, training and experience for RSOs for industrial radiography are as follows:
 1. Completion of the training and testing requirements of 1200—2—8—.07(1);
 2. 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

3. Formal training in the establishment and maintenance of a radiation protection program.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Subparagraph (1)(b) of Rule 1200-2-8-.15 Record keeping Requirements is amended by adding Part 14. and by deleting Part 7. and substituting the following, so that as amended the parts shall read:

7. Records of dosimetry reports received from the accredited NVLAP personnel dosimeter processor as required by paragraph 1200-2-8-.05(3). The licensee shall maintain each record until the Division terminates the license.
14. Records of estimates of exposures because of off-scale personal direct reading dosimeters or of lost or damaged personnel dosimeters until the Division terminates the license.

Authority: T.C.A. §§4-5-201 et seq. and 68-202-203 and 206.

Rule 1200-2-12-.03 Definitions is amended by adding paragraphs (20) and (21), which shall read:

- (20) Energy compensation source (ECS) means a small sealed source, with an activity not exceeding 3.7 MBq (100 microcuries), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.
- (21) Tritium neutron generator target source means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

Authority: T.C.A. §68-202-101 et seq.

Part (1)(e)2. of Rule 1200-2-12-.06 Agreement with Well Owner or Operator is amended by deleting the part and substituting the following, so that as amended the part shall read:

- (1) (e) 2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and,

Authority: T.C.A. §68-202-101 et seq.

1200-2-12-.09 LEAK TESTING OF SEALED SOURCES

- (1) Testing and record keeping requirements. Each licensee who uses a sealed source shall have the source tested for leakage periodically. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the Division for three (3) years after the leak test is performed.
- (2) Method of testing. The wipe of a sealed source shall be performed using a leak test kit or method approved by the Division, U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State. The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample shall be analyzed for radioactive contamination. The analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the Division, U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State to perform the analysis.

- (3) Test frequency.
 1. Each sealed source (except an energy compensation source [ECS]) shall be tested at intervals not to exceed six (6) months. In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.
 2. Each ECS that is not exempt from testing in accordance with paragraph (e) of this section shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made within the three (3) years before the transfer, the ECS may not be used until tested.
- (4) Removal of leaking source from service:
 - (a) If the test conducted pursuant to (1) and (2) of this rule reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an Agreement State, U.S. Nuclear Regulatory Commission, or a Licensing State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a Department, U.S. Nuclear Regulatory Commission, an Agreement State or Licensing State licensee that is authorized to perform these functions.

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

Paragraph (1) of Rule 1200-2-12-.08 Radiation Detection Instruments is amended by deleting the paragraph and substituting the following, so that as amended the paragraph shall read:

- (1) The licensee or registrant shall keep a calibrated and operable radiation survey instrument capable of detecting, as appropriate, beta, gamma and x-ray radiation at each field station and temporary job-site to make the radiation surveys required by this Chapter and by Chapter 1200-2-5. To satisfy this requirement, the radiation survey instrument shall be capable of measuring 0.1 mrem (0.001 mSv) per hour through at least 50 mrems (0.5 mSv) per hour.
- (2) The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee may own the instruments or may have a procedure to obtain them quickly from a second party.
- (3) The licensee or registrant shall have each radiation survey instrument required under (1) of this rule calibrated:
 - (a) At intervals not to exceed six (6) months and after instrument servicing;
 - (b) For linear scale instruments, at two points located approximately 1/3 and 2/3 of full-scale on each scale; for logarithmic scale instruments, at midrange of each decade, and at two points of at least one decade; and for digital instruments, at appropriate points; and
 - (c) So that an accuracy within plus or minus ± 20 percent (20%) of the calibration standard can be demonstrated on each scale.

- (4) The licensee or registrant shall retain calibration records for a period of three (3) years after the date of calibration for inspection by the Division.

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

1200-2-12-.12 DESIGN AND PERFORMANCE CRITERIA FOR SEALED SOURCES

- (1) A licensee may use a sealed source in well logging if the sealed source:
- (a) Is doubly encapsulated;
 - (b) Contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and
 - (c) Meets the requirements in paragraphs (2), (3) and (4) of this Rule.
- (2) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in paragraph (3) or (4) of this rule.
- (3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6-1997, "Sealed Radioactive Sources—Classification."
- (4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if:
- (a) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:
 1. Temperature. The test source must be held at -40°C for 20 minutes, 600°C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.
 2. Impact test. A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.
 3. Vibration. The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.
 4. Puncture test. A 1 gram hammer and pin, 0.3 cm pin diameter must be dropped from a height of 1 m onto the test source.
 5. Pressure test. The test source must be subjected to an external pressure of 24,600 pounds per square inch absolute (1.695×10^7 pascals).
- (5) The requirements in paragraphs (1), (2), (3) and (4) of this rule do not apply to sealed sources that contain licensed material in gaseous form.
- (6) The requirements in paragraph (1), (2), (3) and (4) of this rule do not apply to energy compensation sources (ECS). ECSs shall be registered with the Nuclear Regulatory Commission under 10 CFR 32.210 or with an Agreement State.

Authority: T.C.A. §68-202-101 et seq.

Paragraphs (1) and (3) of Rule 1200-2-12-.20 Personnel Monitoring are amended by deleting the paragraphs and substituting the following, so that as amended the paragraph shall read:

- (1) The licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during the handling of sources of radiation, a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Accreditation Program (NVLAP) processor. Each personnel dosimeter shall be assigned to and worn by only one individual. Film badges shall be replaced at least monthly and other personnel dosimeters replaced at least quarterly. After replacement, each personnel dosimeter shall be promptly processed.
- (3) The licensee or registrant shall retain records of personnel dosimeters and bioassay results for inspection until the Division authorizes disposition of the records.

Authority: T.C.A. §68-202-101 et seq.

Paragraph (3) of Rule 1200-2-12-.26 Notification of Incidents and Lost Sources; Abandonment Procedures for Irretrievable Sources is amended by deleting the paragraph and substituting the following, so that as amended the paragraph shall read:

- (3) (a) Notify the Division of Radiological Health by telephone of the circumstances that resulted in the inability to retrieve the source and:
 1. Obtain Division approval to implement abandonment procedures; or
 2. That the licensee implemented abandonment before receiving Division approval because the licensee believed there was an immediate threat to public health and safety; and

Subparagraphs (4)(i) and (j) of Rule 1200-2-12-.26 Notification of Incidents and Lost Sources; Abandonment Procedures for Irretrievable Sources are re-numbered and a new subparagraph (i) is added, so that as amended the subparagraphs shall read:

- (4) (i) The immediate threat to public health and safety justification for implementing abandonment if prior NRC approval was not obtained in accordance with paragraph (c)(1)(ii) of this section;
- (j) Any other information, such as a warning statement, contained on the permanent identification plaque; and
- (k) State and Federal agencies receiving a copy of this report.

Authority: T.C.A. §68-202-101 et seq.

OTHER INFORMATION

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Barbara A. Davis at the Division of Radiological Health, Central Office, address below, prior to or following the public hearing. However, the Division must receive such written comments in its Central Office by 4:30 p.m. (CST), February 28, 2003, in order to assure consideration.

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

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

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

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

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

Copies are available for review also at the Division of Radiological Health, Central Office:
Division of Radiological Health
L & C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532
(615) 532-0364

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of December, 2002. (12-28)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SOLID WASTE MANAGEMENT**

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules on behalf of the Tennessee Solid Waste Disposal Control Board pursuant to T.C.A. §§ 68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d), 68-211-851, 68-211-852, 68-211-853 and 68-211-861. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

Location	Time	Date
5 th Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN	1:00 p.m. CST	February 19, 2003

Individuals with disabilities who wish to participate in these proceedings (or 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, by writing, telephone, or other means and should be made no less than ten (10) days prior to the scheduled hearing date or date such party intends to review such filings, to allow time to provide such aid or services. Contact the ADA Coordinator at 401 Church Street, 7th Floor L & C Tower, Nashville, TN 37243, 1-888-867-2757. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this notice of rulemaking hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division’s Central Office by 4:30 p.m. CST, February 28, 2003 in order to assure consideration. The “DRAFT” rules may also be accessed for review at the Department’s World Wide Web Site located at “<http://www.state.tn.us/environment/new.htm>”.

The Division of Solid Waste Management has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

Memphis Environmental Assistance Center Suite E- 645, Perimeter Office Park 2510 Mount Moriah Road Memphis, TN 38115-1520 901-368-7939/1-888-891-8332	Chattanooga Environmental Assistance Center State Office Building, Suite 550 540 McCallie Avenue Chattanooga, TN 37402-2013 423-634-5745/1-888-891-8332
Knoxville Environmental Assistance Center State Plaza, Suite 220 2700 Middlebrook Pike Knoxville, TN 37921-5602 865-594-6035/1-888-891-8332	Nashville Environmental Assistance Center 711 R. S. Gass Blvd. Nashville, TN 37243-1550 615-687-7000/1-888-891-8332

Johnson City Environmental Assistance Center
2305 Silverdale Road
Johnson City, TN 37601-2162
423-854-5400/1-888-891-8332

Jackson Environmental Assistance Center
362 Carriage House Drive
Jackson, TN 38305-2222
731-512-1300/1-888-891-8332

Cookeville Environmental Assistance Center
1221 South Willow Avenue
Cookeville, TN 38501
931-432-4015/1-888-891-8332

Columbia Environmental Assistance Center
2484 Park Plus Drive
Columbia, TN 38401
931-380-3371/1-888-891-8332

Additional review copies only are available at the following library locations:

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

Clarksville-Montgomery Cty. Public Library
350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
931-648-8826

Hardin County Library
1013 Main Street
Savannah, TN 38372-1903
731-925-4314

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

McIver's Grant Public Library
204 North Mill Street
Dyersburg, TN 38024-4631
901-285-5032

Kingsport Public Library
400 Broad Street
Kingsport, TN 37660-4292
423-229-9488

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

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

SUBSTANCE OF PROPOSED RULES

Paragraph (2) of rule 1200-1-7-.01 Solid Waste Management System: General is amended by deleting the definitions of "solid waste," "solid waste disposal," "solid waste processing" and "transfer station" and inserting the following replacement definitions:

"Solid waste" means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal. Solid waste does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act (compiled at 33 U.S.C. Section 1342).

"Solid waste disposal" means the process of permanently or indefinitely placing, confining, compacting, or covering solid waste.

“Solid waste processing” means any process that modifies the characteristics or properties of solid waste, including, but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products.

“Transfer station” means a combination of structures, machinery or devices at a place or facility which receives solid waste taken from public and/or private collection vehicles and which is placed in other transportation units for movement to another solid waste management facility.

Paragraph (2) of rule 1200-1-7-.01 Solid Waste Management System: General is amended by deleting the definition of “solid waste disposal system”.

Subparagraph (b) of paragraph (4) of rule 1200-1-7-.01 Solid Waste Management System: General is amended by deleting the current subparagraph (b) and substituting the following language:

- (b) General Requirement – Except as may be specifically allowed in the permit, an operator may not accept for processing or disposal at his facility any special waste unless and until specifically approved to do so in writing by the Department. Facilities shall not process or dispose of special waste for which approval by the Division has expired. Special waste generators shall not send off-site to processing or disposal facilities special waste which approval by the Division has expired, unless the facility has specific authority in the permit to accept such waste.

Subpart (ii) of part 4 of subparagraph (c) of paragraph (4) of rule 1200-1-7-.01 Solid Waste Management System: General is amended by deleting the current subpart (ii) and substituting the following language:

- (ii) Submit all recertifications as required by subpart (i) to the off-site processing or disposal facility and to the Department at the address indicated on the recertification form.
 - I. Recertifications shall be submitted by July 1 each year.
 - II. New special waste approvals issued must be recertified by July 1 of the following year.
 - III. All special waste approvals will expire on July 1 each year if not recertified as provided herein.

Subparagraph (b) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new part 5 to read as follows:

- 5. No permit or other authorization shall be issued or renewed by the Division of Solid Waste Management pursuant to rule chapter 1200-1-7 until all fees and/or penalties owed by the applicant to the Division are paid in full, unless a time schedule for payments has been approved and all payments are current or contested fees or penalties are under appeal.

Subparagraph (e) of paragraph (3) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting the title and substituting the following title:

- (e) Public Notices and Public Comments

Part 1 of subparagraph (e) of paragraph (3) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting the part in its entirety and substituting the following language:

1. Scope

- (i) An applicant shall give public notice, as prepared and directed by the Commissioner, that the following actions have occurred:
 - (I) A permit application as described in subparagraph (a) of this paragraph has been received;
 - (II) A draft permit has been prepared under part (c)3 of this paragraph or a new draft permit prepared under subparagraph (5)(a) or (5)(b); or
 - (III) A public hearing has been scheduled under subparagraph (g) of this paragraph.
- (ii) No public notice is required when a request for a permit modification, revocation and reissuance, or termination is denied under paragraph (5) of this rule. Written notice of that denial shall be given to the permittee.
- (iii) Public notices may describe more than one permit or permit action.
- (iv) An applicant shall provide proof of the completion of all notices required to be given by the Commissioner within 10 days following conclusion of the public notice procedures.
- (v) The Commissioner shall give a public notice that a notice of intent to deny an original permit has been prepared under part (c)2 of this paragraph.

Part 3 of subparagraph (e) of paragraph (3) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting the part in its entirety and substituting the following language:

- 3. Methods – Public notice of activities described in subpart 1(i) of this subparagraph shall be given by the following:
 - (i) By posting in a public place (e.g., post office, library, health department, etc) of the municipalities nearest the site under consideration; and
 - (ii) By publication of a notice in a daily or weekly local newspaper of general circulation as designated by the Commissioner; and
 - (iii) By any other method deemed necessary or appropriate by the Commissioner to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Such additional notices shall be the financial responsibility of the Commissioner. The Commissioner is financially responsible for newspaper notices in excess of one in each county where coverage is deemed necessary.

Subpart (III) of part 4 of subparagraph (e) of paragraph (3) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting the subpart in its entirety and substituting the following language:

- (III) A brief description of the business conducted at the facility or activity described in the permit application including the size and directions from a state highway or interstate, and/or a map (e.g., a sketched or copied street map if the location is remote or not easily accessible) to the facility and type of waste accepted;

Paragraph (3) of rule 1200-1-7-.03 Requirements For Financial Assurance is amended by inserting new subparagraphs (i) and (j) to read as follows and renumbering the current subparagraphs (i), (j), (k), (l) as subparagraphs (k), (l), (m), and (n) respectively.

- (i) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subparagraph (a) of this paragraph. For owners or operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Division Director as specified in subpart (d)4(v) of this paragraph. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
 1. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
 2. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.
- (j) During the active life of the facility, and during the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subparagraph (a) of this paragraph. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Division Director as specified in subpart (d)4(v) of this paragraph. The adjustment may be made by recalculating the post-closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
 1. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.
 2. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

Subpart (i) of part 8 of subparagraph (d) of paragraph (3) of rule 1200-1-7-.03 Requirements For Financial Assurance is amended by deleting the current subpart (i) and substituting the following language:

- (i) The wording of the certificate of insurance must be worded as required at subparagraph (l) of this paragraph. The wording of the policy itself is subject to the review and approval of the Commissioner prior to acceptance as a financial assurance mechanism.

Appendix III of paragraph (4) of rule 1200-1-7-.04 Specific Requirements For Class I, II, III, And IV Disposal Facilities is amended by deleting Appendix III and substituting the following language:

APPENDIX III

<u>Contaminant</u>	<u>Maximum Contaminant Level</u>
<u>Inorganic Chemicals</u>	<u>in Milligrams/Liter</u>
Antimony	0.006
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium (total)	0.1
Fluoride	4.0
Lead ¹	0.015
Mercury	0.002
Nickel ²	0.1
Nitrate	10.0
Selenium	0.05
Silver ³	0.1
Thallium	0.002
 Volatile Organic Chemicals	
Benzene	0.005
Carbon Tetrachloride	0.005
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2,-Dichloroethylene	0.1
O-Dichlorobenzene	0.6
1,4-Dichlorobenzene	0.075
Dichloromethane (methylene chloride)	0.005
1,2-Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachlorethylene	0.005
Toluene	1.0
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Trihalomethanes (total)	0.1
Vinyl Chloride	0.002
Xylenes	10.0
 Organic Chemicals	
Alachlor	0.002
Aldicarb	0.007
Aldicarb sulfoxide	0.007
Aldicarb sulfone	0.007
Atrazine	0.003
Benzo(a)pyrene	0.0002

Carbofuran	0.04
Chlordane	0.002
2,4-D	0.07
Dalapon	0.2
1,2-Dibromo-3-chloropropane	0.0002
Di (ethylhexy)adipate	0.4
Di (ethylhexyl)phthalate	0.006
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene dibromide	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene (HEX)	0.05
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated biphenyls (PCB)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5 TP (Silvex)	0.05
1,2,4-Trichlorobenzene	0.07

- ¹ Action level concentration obtained from TN Division of Water Supply rule 1200-5-1-.33(1)(c)1.
- ² MCL value obtained from TN Division of Water Supply rule 1200-5-1-.06(1)(b)11.
- ³ MCL value obtained from TN Division of Water Supply rule 1200-5-1-.12(1)(n). (EPA Secondary Drinking Water Standard)

All other values are MCLs currently applicable under the National Primary Drinking Water Regulations.

Subparagraph (f) of paragraph (8) of rule 1200-1-7-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting the current subparagraph and substituting the following language to read as follows:

- (f) Notice in Deed to Property – The operator must ensure that, within 90 days of completion of final closure of the facility and prior to sale or lease of the property on which the facility is located, there is recorded, in accordance with State law, a notation on the deed of property or on some other instrument which is normally examined during a title search that will in perpetuity notify any person conducting a title search that the land has been used as a disposal facility and its use is restricted in accordance with the approved closure/post-closure plan.

Subparagraph (b) of paragraph (1) of rule 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by adding a new part 8 to read as follows:

- 8. The annual maintenance fee shall apply to facilities in the post-closure care period.

Subparagraph (b) of paragraph (3) of rule 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (b) and substituting the following language:

- (b) Any person who receives a permit or completes the post-closure care period after July 1 of any year shall pay a proportionate share of the fee based on the number of days the facility is permitted.

Authority: T.C.A. §§ 68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d)(1), 68-211-111(d)(2), 68-211-851(a), 68-211-852, 68-211-853, and 68-211-861.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of December, 2002. (12-13)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SUPERFUND**

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Yorkville Community Center, Yorkville City Park, Highway 77, Yorkville, TN on February 20th, 2003, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
Gibson County (27)	
27-506	F W Gable Site Yorkville, TN

Authority: T.C.A. § 68-212-206(e) and § 68-212-215(e). Page 2 of 2

The notice of rulemaking set out herein was properly filed in the Department of State on the 11th of December, 2002. (12-05)

**THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF WATER SUPPLY**

There will be a hearing before the Division of Water Supply Staff representing the Water Quality Control Board of the Department of Environment and Conservation to hear comments from the public concerning proposed rules under the Tennessee Water Resources Information Act pursuant to T.C.A. Sections 69-8-301 et seq. The proposed rules were drafted primarily to incorporate into state regulation requirements for the registration of water withdrawals. This proposal includes the requirement for registering the withdrawal, the manner of calculation of the volume withdrawn, and the reporting requirements. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated Section 4-5-204. The hearing will take place at the following location:

L&C Tower
401 Church Street
17th Floor Conference Room – Side A
Nashville, TN

10:00 AM CST

February 18, 2003

Written comments will be considered if received at the Division of Water Supply, 401 Church Street, Nashville, TN 37243-1549 by the close of business February 28, 2003.

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 contact may be made in person, by writing, telephone, or other means and should be made no less than ten days prior to the (scheduled meeting date) (date such party intends to review such filings), to allow time to provide such aid or service. Contact the ADA Coordinator, 401 Church Street, 12th Floor L & C Tower, Nashville, TN 37243, 1-888-867-2757. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of the entire text of this notice of rulemaking hearing, contact the nearest office of the Tennessee Division of Water Supply at 1-888-891-8332 or the central office of the Division at 615-532-0191. A complete text of the proposed Rules may also be found by visiting the Department of Environment and Conservation's Web site at <http://www.state.tn.us/environment/dws>.

SUBSTANCE OF THE PROPOSED RULES

PROPOSED RULES OF WATER QUALITY CONTROL BOARD TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF WATER SUPPLY CHAPTER 1200-5-8 WATER WITHDRAWAL REGISTRATION

NEW RULES

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1200-5-8-.01	Authority	1200-5-8-.08	Classification of Water Uses
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1200-5-8-.03	Scope	1200-5-8-.10	Record Maintenance
1200-5-8-.04	Definitions	1200-5-8-.11	Change of Person Responsible for Withdrawal
1200-5-8-.05	Registration Requirement	1200-5-8-.12	Compliance and Civil Penalties
1200-5-8-.06	Ownership/Operational Rights	1200-5-8-.13	Confidentiality of Data
1200-5-8-.07	Measurement Methods and Standards		

1200-5-8-.01 AUTHORITY.

- (1) These Rules and Regulations are issued under the authority of T.C.A. §§ 69-8-301 et seq., as amended.
- (2) The Department of Environment and Conservation, Division of Water Supply is responsible for the supervision of water withdrawal registration.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.02 PURPOSE.

- (1) The purpose of these Rules and Regulations is to provide guidelines for the interpretation of §69-8-301 et seq. of the *Tennessee Code Annotated* and to set out the procedures to be followed by the Department in carrying out the Tennessee Water Resources Information Act. These Rules and Regulations set out the procedures and requirements for registering a water withdrawal.
- (2) Where the terms *shall* and *must* are used, practice and usage is sufficiently standardized to indicate a *mandatory requirement*, insofar as any complaint action by the Department is concerned. Other items, such as *should*, *recommend*, *preferred*, and the like, indicate *desirable procedures or methods*.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.03 SCOPE.

These rules shall apply to all persons withdrawing water from either a surface water or ground water source if the withdrawal meets or exceeds 10,000 gallons a day on any one day for any purpose, except those excluded by the Act and listed below:

- (1) A person may withdraw water for agricultural purposes without having registered the withdrawal. If a person withdraws water for agricultural purposes and another purpose, the water used for agriculture shall not count towards the calculation of whether the withdrawal exceeds ten thousand (10,000) gallons per day or within a 24 hour period. For purposes of this part, “agricultural purposes” shall mean use in the production or harvesting of an agricultural product, including, but not limited to, irrigation of crops, vines, production of hay, turf production and nursery stock production as defined at T.C.A. §43-1-112, and watering of poultry or livestock.
- (2) Nonrecurring withdrawals of water, including, but not limited to, the filling of a swimming pool from a residential water well and accidental withdrawals caused by failure of pipes or equipment.
- (3) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided it is not done on a regular or recurring basis.
- (4) The purchase of water from a utility by a customer, including other water utilities, does not constitute a withdrawal.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.04 DEFINITIONS.

- (1) “Act” means the Tennessee Water Resources Information Act.
- (2) “Board” means the Water Quality Control Board of the Tennessee Department of Environment and Conservation.
- (3) “Commissioner” means the commissioner of the department of environment and conservation, the commissioner’s duly authorized representative and, in the event of the commissioner’s absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation.
- (4) “Consumptive water use” means that portion of water that becomes incorporated into the product, consumed by humans or livestock, that is lost to evaporation or transpiration, or is otherwise removed from the local hydrologic environment from which it was removed.
- (5) “Department” means the Tennessee Department of Environment and Conservation. The terms “state,” “department” and “division” are often used interchangeably in these Rules and Regulations.
- (6) “Dewatering” means the withdrawal of water to facilitate construction or extraction of earth materials.
- (7) “Division” means the Division of Water Supply. The terms “state”, “department” and “division” are often used interchangeably in these Rules and Regulations.
- (8) “Emergency Water Use” means the withdrawal of water, for a period not exceeding thirty days, for the purpose of fire fighting, hazardous substance waste spill response, or other emergency withdrawal of water as determined by the Department.

- (9) "Ground Water" means any water beneath the surface of the ground, including those under the direct influence of surface water, and includes any water from any well, cave, and spring.
- (10) "Person" means any individual, corporation, company, limited liability company partnership, association, group, utility district, federal, state or local government agency, or any combination of them.
- (11) "Public Utility" means any person engaged in the operation of a public water supply system whether serving domestic or commercial water uses or any combination.
- (12) "Recurring" means the withdrawal of water more than 4 days a year.
- (13) "Return Point" means the surface or ground water location where water withdrawn and used is returned or discharged.
- (14) "Source" means a location where surface or ground water is available, including, but not limited to, a water well, cave, spring, stream, river, lake, or impoundment.
- (15) "Surface Water" means any water located on the land surface that includes creeks, streams, rivers, lakes, and impoundments.
- (16) "Use" means the purpose for which any withdrawal is made.
- (17) "Withdraw" means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction. This does not include nonrecurring withdrawals including, but not limited to, the filling of a swimming pool from a residential water well or the accidental withdrawal caused by failure of pipes or equipment.

Authority: *T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.*

1200-5-8-.05 REGISTRATION REQUIREMENT.

- (1) Initial Registration - No person shall withdraw ten thousand (10,000) or more gallons of water per day from a surface water or a ground water source unless the withdrawal is currently registered with the commissioner. Such registration shall be on forms furnished, upon request, by the commissioner. Any person required to submit a registration of withdrawal shall provide at a minimum to the commissioner the following information:
 - (a) An identification of all the withdrawal and return points;
 - (b) The anticipated or proposed volume, frequency and times of year water is to be withdrawn;
 - (c) The volume of the withdrawal shall be reported in gallons per calendar day and a calendar day shall consist of a twenty-four hour period;
 - (d) The use or uses for which the water withdrawn is applied as specified in 1200-5-8-.08, Classification of Water Uses.
 - (e) The estimated volume of water returned at each return point. Return points include, but are not limited to, municipal or industrial wastewater discharges, subsurface disposal, land application, in-stream return etc.

- (f) The person completing and submitting the registration shall sign the form attesting to the accuracy of the information submitted.
- (2) Annual Renewal - Any person who causes such a withdrawal shall annually renew their registration of such water withdrawal with the commissioner on forms provided for the purpose on or before February 15 of every year. The department may develop a form for this purpose. Information reported shall include the user's name, address, sources and locations of withdrawal, volume of water withdrawn each calendar month for the previous twelve months, maximum day withdrawal and the month in which it occurred, method of withdrawal measurement, and any change in volume or points of withdrawal.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.06 OWNERSHIP/OPERATIONAL RIGHTS.

Persons withdrawing water from a source shall comply with all other laws, rules and regulations, and policies of the State. These specifically include, but are not limited to, the Interbasin Transfer Act, the Water Quality Control Act, and the Safe Drinking Water Act.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.07 MEASUREMENT METHODS AND STANDARDS.

The commissioner shall accept a recognized method of measuring the quantities of water withdrawn. Recognized methods of measuring the quantity of surface water withdrawn which are acceptable include the following:

- (1) Flow meters accurate to within ten percent of calibration;
- (2) The rated capacity of the pump in conjunction with the use of an hour meter, electric meter or log;
- (3) Any standard or method employed by the United States Geological Survey in determining water withdrawals;
- (4) Any other method found to provide reliable water withdrawal data approved by the Department.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.08 CLASSIFICATION OF WATER USES.

The following water use classifications shall be used when registering water withdrawals. Persons not covered by this Act that voluntarily register their water withdrawals should use the following water use classification.

- (1) domestic water supply, including municipal water supplies
- (2) irrigation of crops and nursery stock
- (3) livestock watering
- (4) production (including harvesting) of an agricultural product

- (5) navigation (lock usage and flow augmentation)
- (6) thermoelectric power production, including cooling purposes (excludes hydroelectric)
- (7) recreational use
- (8) commercial, institutional or other general public use.
- (9) industrial uses include manufacturing processing, washing, and cooling, but excludes mining related uses (defined below)
- (10) hydroelectric power generation (provided none of it is used consumptively)
- (11) mining (where water is used to wash or process an ore)
- (12) dewatering (mining, quarry rock production, and other operations where water is withdrawn in other to remove water in order to conduct another activity.)
- (13) any other use not defined above

Authority: *T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.*

1200-5-8-.09 POINT OF WITHDRAWAL LOCATION/SOURCE IDENTIFICATION.

- (1) The point(s) of withdrawal and return shall be located at a minimum using one of the following methods:
 - (a) Located on a 7.5 minute USGS topographic map.
 - (b) Coordinates obtained with a GIS unit (in decimal format).
 - (c) The name of the stream or river and river mile from the mouth of the river as shown on a 7.5 minute USGS topographic map.
 - (d) The name and physical address of the municipal or industrial wastewater plant.
- (2) State Driller Tag Number or other State Identification Number, if one has been assigned or public water system (PWS) entry point ID.
- (3) Multiple points of withdrawal may be further identified and designated as W1, W2, W3 and so forth for reporting purposes. Multiple points of return may be further identified as R1, R2, R3, and so forth.

Authority: *T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.*

1200-5-8-.10 RECORD MAINTENANCE.

Persons subject to the water withdrawal provisions of these rules shall retain on their premises or at a convenient location near their premises the following records:

- (1) Copies of Registrations of Withdrawals for the past three (3) years.

- (2) All records and documents, including worksheets, pumpage records, etc., used to calculate the amount of water withdrawn.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.11 CHANGE OF PERSON RESPONSIBLE FOR WITHDRAWAL.

Any change of person responsible for water withdrawn shall be reported to the Department within 60 days.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.12 COMPLIANCE AND CIVIL PENALTIES.

- (1) Any person who
 - (a) fails to file a water withdrawal registration, or
 - (b) fails to timely file a water withdrawal registration, or
 - (c) fails to submit a true and accurate information on any registration form or report required by the Act and these ruleshas incurred a violation and is subject to an Order, including a penalty of up to \$7,500.00 per day per violation as provided in the Act. Each day such violation continues is a separate violation.
- (2) Any person who attempts to prevent or not to allow the commissioner's agents to enter at a reasonable time upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this part has incurred a violation and is subject to an Order, including a penalty of up to \$7,500.00 per day of violation as provided in the Act. Each day such violation continues is a separate violation.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

1200-5-8-.13 CONFIDENTIALITY OF DATA.

If specifically requested by the person registering the withdrawal and if it is deemed necessary by the commissioner to protect trade secret information as defined in T.C.A. §47-25-1702, the commissioner shall keep such trade secret information confidential. To effectuate this provision, the registrant must submit specifically precluded data on separate forms using forms which are coded in such a manner as to conceal the identity of the facility or registrant.

Authority: T.C.A. §§69-8-301 et seq., 69-8-306 and 4-5-202.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of December, 2002. (12-21)

**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 21st day of February 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

Rule 1200-13-12-.08 Provider is amended by adding a new paragraph (1) and renumbering the current paragraph (1) as paragraph (2) so as amended the new paragraph (1) shall read as follows:

- (1) Payment in full.
 - (a) All MCO/BHO participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCO/BHO plus any deductible or copayment required by the TennCare Program to be paid by the individual.
 - (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCO/BHO must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCO/BHO plus any deductible or copayment required by the TennCare Program to be paid by the individual.

Current paragraph (1) of rule 1200-13-12-.08 Provider, renumbered as paragraph (2) is amended by deleting the paragraph in its entirety and inserting the following new paragraph, so that, as amended the paragraph shall state:

- (2) In situations where a MCO/BHO authorizes a service to be rendered by a provider who is not a participating network provider with the MCO/BHO, payment to the provider shall be no less than eighty percent (80%) of the lowest rate paid by the MCO/BHO to equivalent participating network providers for the same service. For emergency services provided to an enrollee by a provider who is not a participating network provider, the MCO/BHO shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCO/BHO's network providers. Emergency care to enrollees shall not require preauthorization.

Current paragraph (2) of rule 1200-13-12-.08 Provider, renumbered as paragraph (3) is amended by deleting subparagraph (a), and inserting the following new subparagraph so that, as amended the subparagraph shall state:

- (3) Participation in the TennCare program will be limited to providers who:

- (a) Accept, as payment in full, the amounts paid by the MCO/BHO, including copays from the enrollee, or the amount paid in lieu of the MCO/BHO by a third party (Medicare, insurance, etc.).
 - 1. A provider may not deny services to any eligible individual due to the individual's inability to pay the cost-sharing amount imposed by the TennCare Program plan in accordance with 42 CFR § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay or who is participating in the TennCare Standard program. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.
 - 2. When alternative sources of payment are potentially available, the provider must elect a payment source prior to billing the MCO/BHO and may not withdraw billing nor refund payment made by the MCO/BHO upon a determination of additional sources of payment.

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 31st day of December, 2002. (12-32)

**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 21st day of February 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

Rule 1200-13-13-.08 Provider is amended by adding a new paragraph (1) and renumbering the current paragraph (1) as paragraph (2) so as amended the new paragraph (1) shall read as follows:

- (1) Payment in full.

- (a) All MCC participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.
- (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCC must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.

Current paragraph (1) of rule 1200-13-13-.08 Provider, renumbered as paragraph (2) is amended by deleting the paragraph in its entirety and inserting the following new paragraph, so that, as amended the paragraph shall state:

- (2) In situations where a MCC authorizes a service to be rendered by a provider who is not a participating network provider with the MCC, payment to the provider shall be no less than eighty percent (80%) of the lowest rate paid by the MCC to equivalent participating network providers for the same service. For emergency services provided to an enrollee by a provider who is not a participating network provider, the MCC shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCC's network providers. Emergency care to enrollees shall not require preauthorization.

Current paragraph (2) of rule 1200-13-13-.08 Provider, renumbered as paragraph (3) is amended by deleting subparagraph (a), and inserting the following new subparagraph so that, as amended the subparagraph shall state:

- (3) Participation in the TennCare program will be limited to providers who:
 - (a) Accept, as payment in full, the amounts paid by the MCC, including copays from the enrollee, or the amount paid in lieu of the MCC by a third party (Medicare, insurance, etc.).
 - 1. A provider may not deny services to any eligible individual due to the individual's inability to pay the cost-sharing amount imposed by the TennCare Program plan in accordance with 42 CFR § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay or who is participating in the TennCare Standard program. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.
 - 2. When alternative sources of payment are potentially available, the provider must elect a payment source prior to billing the MCC and may not withdraw billing nor refund payment made by the MCC upon a determination of additional sources of payment.

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 31st day of December, 2002. (12-31)

**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 21st day of February 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

Rule 1200-13-14-.08 Provider is amended by adding a new paragraph (1) and renumbering the current paragraph (1) as paragraph (2) so as amended the new paragraph (1) shall read as follows:

- (1) Payment in full.
 - (a) All MCC participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.
 - (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCC must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.

Current paragraph (1) of rule 1200-13-14-.08 Provider, renumbered as paragraph (2) is amended by deleting the paragraph in its entirety and inserting the following new paragraph, so that, as amended the paragraph shall state:

- (2) In situations where a MCC authorizes a service to be rendered by a provider who is not a participating network provider with the MCC, payment to the provider shall be no less than eighty percent (80%) of the lowest rate paid by the MCC to equivalent participating network providers for the same service. For emergency services provided to an enrollee by a provider who is not a participating network provider, the MCC shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCC's network providers. Emergency care to enrollees shall not require preauthorization.

Current paragraph (2) of rule 1200-13-14-.08 Provider, renumbered as paragraph (3) is amended by deleting subparagraph (a), and inserting the following new subparagraph so that, as amended the subparagraph shall state:

- (3) Participation in the TennCare program will be limited to providers who:
- (a) Accept, as payment in full, the amounts paid by the MCC, including copays from the enrollee, or the amount paid in lieu of the MCC by a third party (Medicare, insurance, etc.).
 - 1. A provider may not deny services to any eligible individual due to the individual's inability to pay the cost-sharing amount imposed by the TennCare Program plan in accordance with 42 CFR § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay or who is participating in the TennCare Standard program. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.
 - 2. When alternative sources of payment are potentially available, the provider must elect a payment source prior to billing the MCC and may not withdraw billing nor refund payment made by the MCC upon a determination of additional sources of payment.

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 31st day of December, 2002. (12-33)

THE TENNESSEE MASSAGE LICENSURE BOARD - 0870

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-18-211. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 20th day of February, 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.

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0870-1-.19 Professional Ethical Standards.

0870-1-.19 PROFESSIONAL ETHICAL STANDARDS

- (1) The Board requires licensees to uphold professional ethical standards that allow for the proper discharge of their responsibilities to those served, that protect the integrity of the profession, and that safeguard the interest of individual clients. To adhere to these professional ethical standards, licensees will:
 - (a) Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline; and
 - (b) Acknowledge the limitations of and contraindications for massage and bodywork and refer clients to appropriate health professionals; and
 - (c) Avoid any interest, activity or influence which might be in conflict with the licensee's obligation to act in the best interests of the client or the profession; and
 - (d) Comply with all applicable Tennessee statutes and regulations; and
 - (e) Conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons; and
 - (f) Consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training; and
 - (g) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause; and
 - (h) Have a sincere commitment to provide the highest quality of care to those that seek their professional services; and
 - (i) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client; and
 - (j) Provide treatment only where there is reasonable expectation that it will be advantageous to the client; and
 - (k) Refrain, under all circumstances, from initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship; and

- (l) Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are purely for personal gain and not for the good of the client; and
 - (m) Refuse to unjustly discriminate against clients or other health professionals; and
 - (n) Represent their qualifications honestly, including their educational achievements and professional affiliations, and will provide only those services which they are qualified and licensed to perform;
 - (o) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, the client's autonomy, and the client's reasonable expectations of professional behavior.; and
 - (p) Respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given; and
 - (q) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed written or verbal consent of the client, or client's advocate, before providing treatment; and
 - (r) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or
 - 1. when such knowledge is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or
 - 2. when required to do so pursuant to any action in a court of law; or
 - 3. where required by law to report state or federal agencies.
- (2) Violation of any provision listed in paragraph (1) is grounds for disciplinary action, as provided in Rule 0870-1-.13.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-18-204, 63-18-208, 63-18-209, and 63-18-211.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of December, 2002. (12-04)

**THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES - 0940
DIVISION OF MENTAL HEALTH SERVICES**

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of an amendment to present rules pursuant to Tenn. Code Ann., Section 33-1-302, 305, and 307. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code. Ann., Section 4-5-204, and will take place at 1:00 p.m., March 10, 2002, in the Cumberland Room, Cordell Hull Building, 425 Fifth Avenue, North, Nashville, Tennessee.

Written comments will be considered if received by close of business, April 10, 2003, at the DMHDD Office of Legal Counsel, 2600 Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243.

Individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Tennessee Department of Mental Health and Developmental Disabilities, to discuss any auxiliary aids or services needed to facilitate such participation or review. Such contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to the scheduled meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Mental Health and Developmental Disabilities ADA Coordinator, Joe Swinford, 5th Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243. Mr. Swinford's telephone number is (615) 532-6700; the department's TDD is (615) 532-6612. Copies of the notice are available from the Tennessee Department of Mental Health and Developmental Disabilities in alternative format upon request.

For a copy of the notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, 2600 Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6520

SUBSTANCE OF PROPOSED RULES

Chapter 0940-3-2, Community-Based Screening Process For Emergency Involuntary Admissions, to be deleted in its entirety and replaced by:

CHAPTER 0940-3-2

COMMUNITY-BASED SCREENING PROCESS FOR EMERGENCY INVOLUNTARY ADMISSIONS

0940-3-2-.01	Purpose	0940-3-2-.05	Responsibilities of Mandatory Pre-screening Agent
0940-3-2-.02	Scope	0940-3-2-.06	Responsibilities of Physician or Psychologist not Designated as a Mandatory Pre-Screening Agent
0940-3-2-.03	Definitions	0940-3-2-.07	Responsibilities of Designated Crisis response service
0940-3-2-.04	Requirements for Designation as Mandatory Pre-screening Agent	0940-3-2-.08	Responsibilities of the Department

0940-3-2-.01 PURPOSE.

- (1) This chapter establishes a community-based screening process to assure the most appropriate and effective care for service recipients with mental illness or serious emotional disturbance who are evaluated for eligibility for emergency involuntary admission under Title 33, Chapter 6, Part 4, Tennessee Code Annotated. The process includes screening designed to reduce inappropriate utilization of inpatient resources and promote coordinated service delivery in the most appropriate, least restrictive environment available.

0940-3-2-.02 SCOPE.

- (1) This chapter establishes the process by which persons are pre-screened for emergency involuntary admission to a state-owned or operated hospital or treatment resource under Title 33, Chapter 6, Part 4, Tennessee Code Annotated.

0940-3-2-.03 DEFINITIONS.

- (1) “Commissioner” means the Commissioner of Mental Health and Developmental Disabilities or his/her authorized representative.
- (2) “Community-based Screening” means a process by which a person is evaluated to assess the availability of alternative services and supports, determine need for treatment, and ensure that services are provided in the most appropriate, least restrictive environment available.
- (3) “Crisis Response Service” means a team designated by the Commissioner to provide crisis intervention, pre-screening, and diversion services in a defined service area.
- (4) “Department” means the Tennessee Department of Mental Health and Developmental Disabilities.
- (5) “Follow-up” means contact with a service recipient within twelve (12) hours of pre-screening to determine post-evaluation status, assess intervention impact, and assure appropriate service referral.
- (6) “Mandatory Pre-screening Agent” means a person meeting criteria required by T.C.A. § 33-6-427 who is designated by the Commissioner to perform pre-screening of service recipients for emergency involuntary admission.
- (7) “Pre-screening” means a face-to-face evaluation, either by physical presence or televideo, of a service recipient to assess eligibility for emergency involuntary admission and determine whether all available less drastic alternative services and supports are unsuitable to meet his/her needs.
- (8) “Psychologist” means a licensed psychologist with health service provider designation by the board of healing arts and actively practicing as such.
- (9) “Qualified Mental Health Professional” means a person who is licensed in Tennessee, if required for the profession, and is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner, or senior psychological examiner; social worker who is certified with two years of mental health experience or licensed; marital and family therapist; nurse who has a Master’s degree in nursing who functions as a psychiatric nurse; professional counselors; or if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children.
- (10) “Service Area” means a geographical area, designated by the Commissioner, to be served by a mandatory pre-screening process.
- (11) “Treatment Resource” means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

0940-3-2-.04 REQUIREMENTS FOR DESIGNATION AS MANDATORY PRE-SCREENING AGENT (MPA).

- (1) Maintain compliance with requirements for qualified mental health professional (QMHP).
- (2) Successfully complete Department training as required under T.C.A. § 33-6-427(b)(3).
- (3) If providing pre-screening services for children, meet requirements regarding mental health experience with children as required by T.C.A. § 33-1-101(18).
- (4) Accept Commissioner's designation authority as defined in T.C.A. § 33-6-104.
- (5) Comply with responsibilities as defined in T.C.A. §§ 33-6-105 and 33-6-106 and Rule 0940-3-2-.05.
- (6) The MPA will immediately notify the Department if he or she:
 - (a) no longer meets the requirements for QMHP;
 - (b) requires or makes changes in service area location(s);
 - (c) no longer functions as a mandatory pre-screening agent; or
 - (d) changes name, address, contact information.

0940-3-2-.05 RESPONSIBILITIES OF MANDATORY PRE-SCREENING AGENT.

- (1) Be aware of up-to-date information about available community resources and referral procedures to access less restrictive alternatives to hospitalization.
- (2) Comply with county protocol(s) for designated modes of transportation.
- (3) Pre-screen service recipients to assess eligibility for emergency involuntary admission to state-owned or operated facilities under T.C.A. § 33-6-404.
- (4) Try to determine whether the service recipient has a durable power of attorney for health care or a declaration for mental health treatment and comply to the extent possible.
- (5) Try to determine whether the service recipient is under a mandatory outpatient treatment obligation from an inpatient provider.
- (6) Complete a certificate of need for any service recipient assessed as eligible for emergency involuntary admission under T.C.A. § 33-6-404.
- (7) Determine and document level of security required and mode of transportation to the admitting hospital for service recipients eligible for emergency involuntary admission under T.C.A. § 33-6-404.
- (8) When a service recipient is referred for emergency involuntary admission or alternative services, provide at least the following information to the treatment resource:
 - (a) The certificate of need, if referred for emergency involuntary admission;

- (b) Acknowledgement and copy, where possible, of a durable power of attorney for health care or a declaration for mental health treatment;
 - (c) Existence of mandatory outpatient treatment obligation, if applicable, and discharging facility, if known;
 - (d) Referral contact;
 - (e) Any known medical condition(s);
 - (f) Current or recent prescription and/or over-the-counter medication(s), if any;
 - (g) Current or recent use of alcohol and/or other substance use, if any;
 - (h) Name of current or most recent community mental health provider, if known; and
 - (i) Recommendations for services and/or supports following discharge.
- (9) When a service recipient is evaluated and does not meet emergency involuntary admission criteria, the MPA will:
- (a) Assess availability of alternative services and make referral, if appropriate;
 - (b) Initiate contact with each service recipient not eligible for emergency involuntary admission within twelve (12) hours of evaluation and complete follow-up as necessary. By agreement, an MPA may designate another QMHP or a crisis response service to meet responsibilities for follow-up as defined in 0940-3-2-.03(5);
 - (c) Maintain documentation of at least the following information:
 - 1. Reason/justification for diversion;
 - 2. Clinical intervention activities, if applicable;
 - 3. Alternative services available and offered to the service recipient, if appropriate;
 - 4. Results of follow-up contact and actions taken.

0940-3-2-.06 RESPONSIBILITIES OF PHYSICIAN OR PSYCHOLOGIST NOT DESIGNATED AS A MANDATORY PRE-SCREENING AGENT.

- (1) If a service recipient requires evaluation for emergency involuntary admission under T.C.A. § 33-6-404 to a state-owned or operated treatment resource and cannot be examined by a mandatory pre-screening agent within two (2) hours of the request to examine the person, a physician or psychologist may choose to perform the evaluation and provide a certificate of need. The physician or psychologist then has the following responsibilities:
- (a) Maintain compliance with requirements for physician under T.C.A. § 33-1-101(15) or psychologist under T.C.A. § 33-6-427(a).

- (b) Pre-screen the service recipient for emergency involuntary admission under T.C.A. § 33-6-404.
- (c) Try to determine whether the service recipient has executed a durable power of attorney for health care or a declaration for mental health treatment and comply to the extent possible.
- (d) Try to determine whether the service recipient is under a mandatory outpatient treatment obligation from an inpatient provider.
- (e) Before completing a certificate of need, make a determination, in consultation with a crisis response service that serves the county where the service recipient is being evaluated, that all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person and document this consultation. A face-to-face consultation with the crisis response service is not required.
- (f) Complete a certificate of need for any service recipient assessed as eligible for emergency involuntary admission under T.C.A. § 33-6-404.
- (g) Determine and document level of security required and mode of transportation to the admitting hospital for service recipients eligible for emergency involuntary admission under T.C.A. § 33-6-404.
- (h) For service recipients not eligible for emergency involuntary admission, notify a crisis response service that serves the county where the service recipient resides or is receiving services of the need for follow-up. Provide necessary information and document this notification.
- (i) When a service recipient is referred for emergency involuntary admission or alternative services, provide at least the following information to the treatment resource:
 - 1. The certificate of need for emergency involuntary admission;
 - 2. Acknowledgement and copy, where possible, of a durable power of attorney for health care or a declaration for mental health treatment;
 - 3. Existence of mandatory outpatient treatment obligation, if applicable, and discharging facility, if known;
 - 4. Referral contact;
 - 5. Any known medical condition(s);
 - 6. Current or recent prescription and/or over-the-counter medication(s), if any;
 - 7. Current or recent use of alcohol and/or other substance use, if any;
 - 8. Name of current or most recent community mental health provider, if known; and
 - 9. Recommendations for services and/or supports following discharge.

0940-3-2-.07 RESPONSIBILITIES OF DESIGNATED CRISIS RESPONSE SERVICE.

- (1) Upon request, provide consultation to any physician or psychologist regarding the availability of less drastic alternatives to placement in a hospital or treatment resource.
- (2) Upon notification that the service recipient has been evaluated by a physician or psychologist as described in 0940-3-2-.06(4) and does not meet emergency involuntary admission criteria, initiate contact with the service recipient in accordance with T.C.A. § 33-6-106(a) to determine outcome and complete follow-up as necessary.
- (3) Document results of follow-up contact and actions taken.

0940-3-2-.08 RESPONSIBILITIES OF THE DEPARTMENT.

- (1) Designate individuals to serve as mandatory pre-screening agents.
- (2) Designate service area jurisdiction of mandatory pre-screening agents.
- (3) Provide training program required for designation of mandatory pre-screening agents.
- (4) Notify the Claims Commission of designated mandatory pre-screening agents.
- (5) Maintain and publish an accurate and current list of designated mandatory pre-screening agents per service area and notify the Claims Commission of any changes in MPA status.
- (6) Maintain a list of private hospitals or treatment resources that have notified the Commissioner of acceptance of Mandatory Pre-screening Agent authority.

Authority: T. C. A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; and §§ 33-2-301 and 302

This notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of December, 2002. (12-24)



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 December 2, 2002 and ending December 31, 2002.


RILEY C. DARNELL
Secretary of State

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