

TAAAR



October 15, 2003
Volume 29, Number 10

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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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*.

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

BOARD OF DENTISTRY - 0460

NOTICE OF WITHDRAWAL OF RULES

The Board of Dentistry hereby gives notice of withdrawal of amendment to subparagraph (3) (c) of rule 0460-1-.05, filed with the Department of State on the 22nd day of July, 2003 to have become effective on the 10th day of October, 2003.

The notice of withdrawal of rules was properly filed in the Department of State on the 24th day of September, 2003. (09-24)

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 8.00%.

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.

Kevin P. Lavender, 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 November 2003 is 9.03 percent 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 5.03 percent.

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.

Kevin P. Lavender, Commissioner

GOVERNMENT OPERATIONS COMMITTEES**ANNOUNCEMENT OF PUBLIC HEARINGS**

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of September 2003. 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 NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-01	Sept 4, 2003	0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0450-1</i> <i>General Rules Governing Professional Counselors</i> 0450-1-04 Qualifications for Licensure 0450-1-05 Procedures for Licensure 0450-1-07 Application Review, Approval, Denial, Interviews 0450-1-08 Examinations</p> <p><i>Chapter 0450-2</i> <i>General Rules Governing Marital and Family Therapists</i> 0450-2-08 Examinations</p> <p><i>Chapter 0450-3</i> <i>General Rules Governing Clinical Pastoral Therapists</i> 0450-3-08 Examination</p>	Richard F. Russell, Deputy General Counsel, Office of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120, (615) 741-1611	Nov 18, 2003
09-02	Sept 4, 2003	1020 Examiners for Nursing Home Administrators	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1020-1</i> <i>General Rules Governing Nursing Home Administrators</i> 1020-1-01 Definitions 1020-1-04 Approval of Programs of Study 1020-1-06 Preceptors, Administrator-In-Training and Administrator-In-Training Programs 1020-1-09 Application Review, Approval, Denial, and Interviews 1020-1-10 Examinations 1020-1-11 Licensure Renewal</p> <p>1020-1-05 Temporary Licenses 1020-1-07 Qualifications for Licensure 1020-1-08 Procedures for Licensure</p>	Ernest Sykes, Jr. Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 18, 2003
09-03	Sept 4, 2003	1365 Social Worker Certification and Licensure	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1365-1</i> <i>General Rules and Regulations</i> 1365-1-04 Qualifications for Certification and Licensure 1365-1-05 Procedures for Certification and Licensure 1365-1-06 Fees 1365-1-08 Examinations 1365-1-19 Board Meetings, Officers, Consultant, and Records</p>	Ernest Sykes, Jr. Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 18, 2003
09-04	Sept 4,	0400 Environment and Conservation	Rulemaking Hearing	Amendments	<p>1200-2-10-24 Registration 1200-2-10-27 Inspections</p>	Alan Leiserson TDEC OGC 25th Fl TN Twr	Nov 18, 2003

SEQ NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULENUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-04, cont.	2003	Radiological Health	Rules	Amendments	1200-2-10-24 Registration 1200-2-10-27 Inspections	Alan Leiserson TDEC OGC 25th Fl TN Twr 312 8th Ave N Nashville TN 37243-1548 615-532-0131	Nov 18, 2003
09-06	Sept 4, 2003	1200 Health Licensing Health Care Facilities Health Care Facilities	Rulemaking Hearing Rules	Amendments New Rule	Chapter 1200-8-6 Standards for Nursing Homes 1200-8-6-.06, Basic Services 1200-8-6-.11, Records and Reports 1200-8-6-.15 Nurse Aide Training and Competency Evaluation	Ernest Sykes, Jr. Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Nov 18, 2003
09-07	Sept 4, 2003	1660 Wildlife Resources Commission	Emergency Rule	Amendments	Chapter 1660-2-7 Rules and Regulations for Governing Operation of Vessels 1660-2-7-.14 Ft. Loudoun Lake	Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	Sept 4, 2003 through
09-08	Sept 4, 2003	9040 Mental Health and Developmental Disabilities Office of Licensure	Proposed Repeal	Repeals	0940-5-1-.02 Definition of Terms Used in Alcohol and Drug Abuse Rules 0940-5-1-.05 Definition of Distinct Categories of Alcohol and Drug Abuse Facilities. 0940-5-3-.01 Application of Rules for Alcohol and Drug Abuse Non-Residential Treatment Facilities 0940-5-3-.02 Application of Rules for Alcohol and Drug Abuse Non-Residential Methadone Treatment Facilities 0940-5-3-.03 Application of Rules for Alcohol and Drug Abuse Residential Detoxification Treatment Facilities 0940-5-3-.04 Application of Rules for Alcohol and Drug Abuse Residential Rehabilitation Treatment Facilities 0940-5-3-.05 Application of Rules for Alcohol and Drug Abuse Halfway House Treatment Facilities 0940-5-3-.06 Application of Rules for Alcohol and Drug Abuse Early Intervention Facilities 0940-5-3-.07 Application of Rules for Alcohol and Drug Abuse DUI School Facilities	Cynthia C. Tyler Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6520	Jan 28, 03

ANNOUNCEMENTS

SEQ NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULENUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-09, cont.	2003	Developmental Disabilities Division of Mental Health Services	Rules		Crisis Stabilization Services 0940-5-18-.03 Policies And Procedures 0940-5-18-.04 Personnel And Staffing Requirements 0940-5-18-.05 Individual Plan Of Care Requirements 0940-5-18-.06 Individual Record Requirements 0940-5-18-.07 Medication Administration 0940-5-18-.08 Storage Of Medications And Poisons 0940-5-18-.09 Disposition Of Unused Medications	Developmental Disabilities 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6520	
09-12	Sept 11, 2003	0400 Environment and Conservation Bureau of Environment Air Pollution Control	Rulemaking Hearing Rule	New Rule	Chapter 1200-3-27 <i>Nitrogen Oxides</i> 1200-3-27-.07 Voluntary NOx Emissions Reduction Program	Mr. Martin Smith Air Pollution 9th Fl L&C Annex 401 Church St Nashville TN 37243-1531	Nov 25, 2003
09-14	Sept 16, 2003	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendments	Chapter 1660-1-14 <i>Rules and Regulations for Refuges, Wildlife Management Areas, and Public Hunting Areas</i> 1660-1-14-.15 Fees for Use of Royal Blue Wildlife Management Area	Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204-0747 (615)781-6606	Nov 30, 2003
09-15	Sept 16, 2003	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	Chapter 1660-2-7 <i>Rules and Regulations Governing Operations of Vessels</i> 1660-2-7-.18 Tellico Reservoir	Sheryl Holtam, Attorney Tennessee Wildlife Resources Agency P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	Nov 30, 2003
09-17	Sept 17, 2003	0460 Dentistry	Rulemaking Hearing Rules	Amendments	Chapter 0460-1 <i>General Rules</i> 0460-1-.01, Definitions 0460-1-.02, Fees Chapter 0460-3 <i>Rules Governing Practice of Dental Hygienists</i> 0460-3-.06, Nitrous Oxide Certification 0460-3-.09, Scope of Practice Chapter 0460-4 <i>Rules Governing the Practice of Dental Assistants</i> 0460-4-.04, Coronal Polishing Certification 0460-4-.05, Nitrous Oxide Certification	Nick Aemisegger OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 1, 2003

SEQ NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULENUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-17, cont.					0460-4-.08, Scope of Practice <i>Chapter 0460-5 General Rules Governing Schools, Programs and Courses</i> for Dentists, Dental Hygienists, and Registered Dental Assistants 0460-4-.09 Sealant Application Certification 0460-5-.01 Schools of Dentistry 0460-5-.02 Schools, Programs and Courses for the Dental Hygienist 0460-5-.03 Schools, Programs and Courses for the Registered Dental Assistant		
09-18	Sept 17, 2003	1200 Health Tennessee Medical Laboratory Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-6-3 General Rules Governing Medical Laboratories</i> 1200-6-3-.12 Referral of Cultures to the Department of Health, 1200-6-3-.19 Preparatory Portions of Laboratory Tests	Robert J. Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec1, 2003
09-19	Sept 17, 2003	0800 Labor and Workforce Development	Proposed Rules	Repeals	<i>Chapter 0800-3-1 Bedding and Sterilization</i> 0800-3-1-01 Definitions is repealed 0800-3-1-02 Administration 0800-3-1-03 Application of the Act 0800-3-1-04 Labeling 0800-3-1-05 Sterilization 0800-3-1-06 Regulations 0800-3-1-07 Enforcement 0800-3-1-08 Regulations for Sterilization 0800-3-1-09 Cotton 0800-3-1-10 Feathers and Down 0800-3-1-11 Miscellaneous Filing Materials 0800-3-1-12 Attachment of Labels 0800-3-1-13 Sterilization Record Book	Sydné Ewell Labor and Workforce Development Legal Division Andrew Johnson Twr 2nd Fl 710 J Robertson Pkwy Nashville TN 37243 615-741-4356	Jan 28, 2003
09-20	Sept 17, 2003	0800 Labor and Workforce Development	Proposed Rules	Repeals	<i>Chapter 0800-1-9 Hazardous Chemical Right to Know</i> 0800-1-9-.01 Purpose and Scope 0800-1-9-.02 Definitions 0800-1-9-.03 Notice 0800-1-9-.04 Hazardous Chemical List	Sydné Ewell Labor and Workforce Development Legal Division Andrew Johnson Twr 2nd Fl	Jan 28, 2003

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SEQ NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULENUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-20, cont.					0800-1-9-.05 Material Safety Data Sheets 0800-1-9-.06 Container Labeling and Other Forms of Warning 0800-1-9-.07 Hazardous Chemical Education and Training 0800-1-9-.08 Prohibition of Discharge or Discrimination 0800-1-9-.09 Trade Secrets 0800-1-9-.10 Firefighter Protection 0800-1-9-.11 Workplace Chemical List 0800-1-9-.12 Recordkeeping and Reporting 0800-1-9-.13 Public Information 0800-1-9-.14 Contractors and Subcontractors	710 J Robertson Pkwy Nashville TN 37243 615-741-4356	
09-21	Sept 19, 2003	1175 Private Investigation and Polygraph Commission	Rulemaking Hearing Rules	Amendments	Chapter 1175-1 <i>Private Investigation Commission</i> 1175-1-.03 Finger Printing 1175-1-.05 Change of Company Affiliation and Change of Address 1175-1-.11 License Fees 1175-1-.15 Civil Penalties Chapter 1175-2 <i>Continuing Professional Education</i> 1175-2-.01 Definitions Chapter 1175-3 <i>Private Investigator Training</i> 1175-3-.01 Definitions 1175-3-.05 Certified Training Company Applicants – Requirements Chapter 1175-4 <i>Rules of Professional Conduct and Standards of Practice</i> 1175-4-.02 Proper Conduct of Practice 1175-4-.07 Confidential Client Information Chapter 1160-1 <i>Administration and Enforcement</i> 1160-1-.01 Definitions 1160-1-.02 Applications 1160-1-.06 Professional Standards 1160-1-.08 Fees for Licenses	Alison G. Zane Commerce and Insurance 500 J Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	Dec 3, 2003

SEQ NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-21, cont.					<i>Chapter 1160-2 Continuing Education</i> 1160-2 Continuing Education		
09-22	Sept 22, 2003	1200 Environment and Conservation Ground Water Protection	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-6 Subsurface Sewage Disposal</i> 1200-1-6-.18 Installer of Subsurface Sewage Disposal Systems	Mr. Dan E. Hoover Ground Water Protection 10th Fl L&C Twr 401 Church St Nashville, TN 37243-1540 (615) 532-0772	Dec 6, 2003
09-24	Sept 24, 2003	0460 Dentistry	Notice of Withdrawal of Rules		0460-1-.05(3) (c) originally filed July 22, 2003; effective Oct 10, 2003		----- ---
09-25	Sept 25, 2003	1220 Tennessee Regulatory Authority	Rulemaking Hearing Rules	Amendments	<i>Chapter 1220-4-1 General Public Utility Rules</i> 1220-4-1-.10 Reports-Uniform Financial Report Forms	J. Richard Collier General Counsel TRA 460 J Robertson Pkwy Nashville TN 37243 (615) 741-2904, ext 170	Dec 9, 2003
09-29	Sept 26, 2003	1200 Health Health Services Administration Maternal & Child Health/Newborn Screening	Proposed Rules	Amendments and repeals	<i>Chapter 1200-15-1 Phenylketonuria, Hypothyroidism and Other Metabolic/Genetic Defects</i> 1200-15-1-.01 Tests 1200-15-1-.02 Institutions Responsible For Tests For Newborn Infants 1200-15-1-.03 Metabolic/Genetic Newborn Screening, Pamphlet Provided To Parents 1200-15-1-.04 Local Health Departments Must Assist The Department Of Health 1200-15-1-.05 Fee For Testing 1200-15-1-.06 Department Of Education And Department Of Health Responsibilities	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Jan 28, 2004
09-30	Sept 29, 2003	0400 Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-7 Solid Waste Processing and Disposal</i> 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities 1200-1-7-.03 Requirements For Financial Assurance	Glenn Birdwell Solid Waste Management L & C Twr, 5th Floor 401 Church Street Nashville, TN 37243	Dec 13, 2003

ANNOUNCEMENTS

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SEQ NO.	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULENUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-30, cont.					Composting Facilities		
09-31	Sept 29, 2003	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children</i> 1240-4-6-.07 Staff Qualifications 1240-4-6-.10 Transportation	William B. Russell, Cit Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Sept 29, 2003
09-32	Sept 29, 2003	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-1 Standards for Group Child Care Homes</i> 1240-4-1-.03 Staff 1240-4-1-.07 Transportation	William B. Russell, General Counsel Cit Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Dec 13, 2003
09-33	Sept 29, 2003	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-4 Standards for Family Child Care Homes</i> 1240-4-4-.03 Staff 1240-4-4-1-.07 Transportation	William B. Russell, General Counsel Cit Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Dec 13, 2003
09-34	Sept 29, 2003	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children</i> 1240-4-3-.07 Staff Qualifications 1240-4-3-.10 Transportation	William B. Russell, General Counsel Cit Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Dec 13, 2003
09-35	Sept 29, 2003	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-2-4 1240-2-4-.03 Guidelines for Calculating Child Support Award</i> 1240-2-4-.04 Criteria for Deviation from Guidelines	Barbara Broersma Cit Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Dec 13, 2003

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

Applications will be heard at the November 19, 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 September 1, 2003. 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

Vanderbilt-Gateway Cancer Center, LLC
Alfred Thun Road
Clarksville (Montgomery Co.), TN 37040
Ronald Hill – (615)—936-6012
CN0308-057

The acquisition of a linear accelerator, CT simulator and initiation of radiation therapy services. The new center will be located on Alfred Thun Road in Clarksville, Tennessee. The Department of Health no longer requires radiation therapy centers to be licensed as specialty ambulatory surgical treatment centers.
\$ 6,709,112.00

+Baptist Hospital of East Tennessee, Inc.
137 Blount Avenue
Knoxville (Knox Co.), TN 37920
John B. Sylvania – (865)—632-5166
CN0308-058

The acquisition of a Gamma Knife unit and initiation of Gamma Knife surgery services on the hospital campus.
\$ 4,497,000.00

NAME AND ADDRESS

DESCRIPTION

All Care Plus, Inc.
222 West Central Avenue
Jamestown (Fentress Co.), TN 38556
Jerry W. Taylor (615)726-1200
CN0308-060

The addition of the following five counties to the licensed service area of All Care Plus, Inc.: Anderson, Blount, Knox, Loudon and Scott. The agency is currently licensed to serve Cumberland, Fentress, Morgan, Overton, Pickett, Putnam, Rhea, Roane, Van Buren, Warren, and White Counties. Also, the relocation of the parent office from 210 Thurman Avenue, Suite 101A, Crossville (Cumberland County), Tennessee to be located at 222 West Central Avenue, Jamestown (Fentress County), Tennessee.
\$ 288,635.00

NHC HealthCare, Farragut
120 Cavett Hill Lane
Knoxville (Knox Co.), TN 37922
Bruce Duncan (615)890-2020
CN0308-062

The addition of thirty (30) Medicare certified nursing home beds to the existing sixty (60) beds. If approved, the total licensed bed capacity will be ninety (90) nursing home beds: sixty-two (62) nursing home beds and twenty-eight (28) skilled nursing facility beds.
\$ 3,804,600.00

Morristown-Hamblen Hospital
1908 West Fourth North Street
Morristown (Hamblen Co.), TN 37814
Jennie Morris – (423)—586-4231
CN0308-063

The addition of fifteen (15) acute care hospital beds. Thirteen (13) of the beds will be utilized as medical/surgical beds and two (2) as obstetrical beds. The bed complement will increase from 155 to 170 and will be broken down as follows: from 93 to 106 medical/surgical beds, from 7 to 9 obstetric beds, 20 ICU (no increase), 6 NICU (no increase), 17 pediatrics (no increase), and 12 geri-psych beds (no increase). This project also includes renovations and construction to accommodate the increase in beds.
\$ 11,025,903.00

Johnson City Medical Center
219 Princeton Road, Suite 101
Johnson City (Washington Co.), TN 37601
Tony Benton (423)431-6824
CN0308-064

The establishment of an outpatient diagnostic center and the initiation of magnetic resonance imaging “MRI” services. Mountain States Health Alliance will enter into a three (3) year lease agreement with State of Franklin Healthcare Associates Outpatient Center for use of equipment, space and staff previously approved under Certificate of Need CN0212-122A to provide MRI services on a part-time basis, four hours per day, five days per week, Monday through Friday. These services will be provided at 219 Princeton Road, Suite 101, Johnson City, Tennessee.
\$ 1,325,000.00

NAME AND ADDRESS	DESCRIPTION
Summit Medical Center 5655 Frist Boulevard Hermitage (Davidson Co.), TN 37076 John Wellborn (615)665-2022 CN0308-065	The addition of six (6) acute care hospital beds and the initiation of rehabilitation services. The inpatient rehabilitation unit will contain ten (10) beds and will be located on the seventh floor in approximately 8,700 square feet (SF) of remodeled space. Sixteen (16) existing and unoccupied bed spaces in the 8,700 SF area will be converted to accommodate the ten (10) bed rehabilitation services. This area was formerly the site of a sixteen (16) bed licensed skilled nursing facility (SNF) unit from 1196 to November 2001, when it was closed and delicensed. If approved, the hospital's total licensed bed complement will increase from 188 licensed general acute care beds to 194 beds as follows: 116 medical beds (from 120 beds), 24 obstetrical beds (no change), 24 ICU/CCU beds (no change), 20 adult psychiatric beds (no change) and 10 rehabilitation beds (from 0 beds), for a total of 194 general acute care beds. \$ 270,450.00
Southwind Endoscopy Center 3725 Champion Hills Drive, Suite 2000 Memphis (Shelby Co.), TN 38125 John Wellborn (615)665-2022 CN0308-066	The establishment of an ambulatory surgical treatment center limited to endoscopy services and the outpatients of Southwind Medical Specialists. The facility will have two (2) endoscopic procedure rooms and other clinical areas for a total of 2,376 SF of space and will share 1,574 SF of support space with adjoining private practice office. \$ CN0308-066
Neurosurgery and Spine Consultants MRI 9314 Park West Boulevard, Suite 400 Knoxville (Knox Co.), TN 37923 John Wellborn (615)665-2022 CN0308-070	The acquisition of a magnetic resonance imaging "MRI" unit and the initiation of in-office magnetic resonance imaging (MRI) services for the patients of Neurosurgery and Spine Consultants of East Tennessee, P.C. \$ 2,185,951.00
+Knoxville Regional Gamma Knife 7551 Dannaer Lance Powell (Knox Co.), TN 37849 William H. West - (615)726-5661 CN0308-071	The acquisition of a Gamma Knife and the initiation of Gamma Knife surgery services in approximately 2,500 square feet of space to be located in an outpatient campus being developed by Saint Mary's Health System-North in Knoxville, Tennessee. \$ 6,941,084.00

BOARD OF EXAMINERS IN PSYCHOLOGY - 1180**PETITION FOR DECLARATORY ORDER****NOTICE OF HEARING
AND
NOTICE TO POTENTIALLY INTERESTED PERSONS**

The United States Department of Energy, Oak Ridge Operations Office, has filed a Petition for a Declaratory Order pursuant to Tenn. Code Ann. § 4-5-224 and the Uniform Rules for Hearing Contested Cases Before State Administrative Agencies, Tenn. Comp. R. & Regs. 1360-4-1-.07.

1. Petitioner's Name: United States Department of Energy
 Oak Ridge Operations Office
 P.O. Box 2001
 Oak Ridge, Tennessee

 Telephone Number: (865) 576-1205

 Docket Number: 17.15-049075A

2. Petitioner's Attorney: Ivan A. Boatner
 Office of Chief Counsel

 Address: P.O. Box 2001
 Oak Ridge, Tennessee 37831

 Telephone Number: (865) 576-1205

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

 United States Department of Energy

4. Provide a statement of the facts that led to the filing of this petition.

The United States Department of Energy (DOE), a cabinet level agency of the United States of America, has established an Accelerated Access Authorization Program (AAAP) office in Oak Ridge, Tennessee. The purpose of the AAAP is to expedite the granting of interim top secret or "Q" clearances for DOE federal and contractor employees. The AAAP program is managed by DOE's current security contractor, Wakenhut Services, Inc. The Oak Ridge AAAP office provides security clearance services for all DOE employees east of the Mississippi River, including the District of Columbia. Since these AAAP services relate to highly sensitive and classified Federal government security issues, DOE's AAAP program does not interface with the general public.

One component of the AAAP process is a psychological evaluation. DOE has elicited the assistance of three Tennessee licensed psychologists currently holding DOE Q clearances to conduct the majority of routine psychological evaluations required by the Oak Ridge AAAP office.

Given the central location of the Oak Ridge AAAP program, it is anticipated that the program will process a significant number of cases and that the number should increase during the first several years of operation.

In addition to servicing DOE federal and contractor employees, the program also services Department of Navy employees, at their request, and shortly will begin to service the Department of Homeland Security, also at their request. As demand increases and the Oak Ridge AAAP office becomes more established, other Tennessee licensed psychologists will be trained and utilized.

Donald Gucker, Ph.D., a licensed psychologist in the state of New Mexico, currently manages the AAAP office in Albuquerque and also manages the AAAP operation in Oak Ridge. Until such time as an adequate number of Tennessee psychologists can be recruited and trained, Dr. Gucker and/or other licensed psychologists working with the DOE AAAP program, including supervisory psychologists may need to assist the Tennessee psychologists in order to meet the demand when unanticipated large psychological evaluation loads occur. In addition to meeting the demand for these evaluations, Dr. Gucker and other supervisory AAAP psychologists may need to perform evaluations for other purposes such as training and further development and refinement of the program. For Dr. Gucker and other New Mexico psychologists to provide these psychological evaluations, which are required to protect national security, DOE requests an exemption from the Tennessee licensing requirements so that out-of-state licensed psychologists can be available to conduct the required psychological evaluations.

5. Provide a summary of the relief the Petitioner is requesting, including the specific nature of the requested order and the conclusions the Petitioner would like the agency to reach at the conclusion of the declaratory process.

DOE requests that an Order be entered declaring the DOE AAAP psychologists licensed in other jurisdictions can perform psychological evaluations of DOE, DOE contractor, Department of Navy, and Department of Homeland Security employees for the limited purpose security clearance decisions without the need of either becoming licensed in Tennessee or performing their evaluations under the supervision of a licensed Tennessee psychologist. DOE asks that the Declaratory Order specifically find that the DOE AAAP program meets the specific exemption requirements of T.C.A. § 63-11-206(d) and that accordingly DOE AAAP psychologists licensed in other jurisdictions are exempt from the general licensing requirements. DOE further asks that the Declaratory Order specifically declare that DOE AAAP psychologists licensed in other jurisdictions who perform evaluations as part of the AAAP program are not subject to penalties set forth in Tenn. Code Ann. § 63-11-206(a).

6. Citation to the statute, rule or order which is the subject of the petition.

Tenn. Code Ann. § 63-11-206 and Tenn. Comp. R. & Regs. 1180-1-.02(2)

7. State how the statute, rule and/or order cited above specifically and directly produces and effect or result upon the Petitioner:

DOE is affected by the statute and rules cited above because they create an uncertainty as to whether DOE's AAAP psychologists from other jurisdictions can lawfully evaluate employees for national security purposes at DOE's site in Oak Ridge, Tennessee. The uncertain status of this question also creates potential personal liability for the DOE AAAP psychologists from other jurisdictions. Finally, the unresolved nature of this question hampers DOE's ability to resolve backlogs of security clearance actions in a timely manner. This potential cause of delay could have a negative impact upon the national security.

A hearing has been scheduled for Wednesday, November 19, 2003, at 9 a.m. before the Tennessee Board of Psychological Examiners in the Tennessee Room of the Cordell Hull Building, Ground Floor, 425 5th Avenue North, Nashville, Tennessee 37247.

If you have questions, you may contact the Petitioner's attorney, Ivan A. Boatner of the Office of Chief Counsel, U.S. Department of Energy, at the address and phone number listed at the beginning of this notice.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 25th day of September, 2003.

Submitted for publication by:

Nicole L. Armstrong (BPR #020615)
Assistant General Counsel
Office of General Counsel
Tennessee Department of Health
312 8th Ave. N., 26th Fl. Wm. Snodgrass Tower
Nashville, Tennessee 37243
(615) 741-1611

TENNESSEE REAL ESTATE COMMISSION - 1260

NOTICE OF WITHDRAWAL

The Tennessee Real Estate Commission hereby gives notice of withdrawal of the Rulemaking Hearing Rules containing Amendments to Rules, Chapters 1260-2 and 1260-5 and New Rules, Chapters 1260-2, 1260-6 and 1260-7 filed with the Department of State on the 3rd day of July, 2003, to have become effective on the 16th day of September, 2003.

The notice of withdrawal of rules set out herein was properly filed with the Department of State on the 11th day of September, 2003. (09-13)

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EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 1200 - Department of Health - Bureau of Health Services Administration Communicable and Environmental Disease Services - Emergency rule covering reporting of diseases to public health authorities, chapter 1200-14-1 Communicable Diseases, 7 T.A.R. (July 15,2003) - Filed June 10, 2003; effective through November 22, 2003. (06-11)
- 1200 - Department of Health - Water Quality Control Board - Division of Water Pollution Control - Emergency rules concerning criterion for nutrients, chapter 1200-4-3 General Water Quality Criteria, 8 T.A.R. (August 15, 2003) - Filed July 31, 2003; effective through January 12, 2004. (07-32)

THE TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULE AMENDMENT

Pursuant to T.C.A. 4-5-208, the Tennessee Wildlife Resources Commission is promulgating this emergency rule regarding waterway zoning on Ft. Loudoun Lake. This rule is necessary to insure the security of the City of Knoxville's water supply and would prohibit boaters from entering an area that is approximately a 70 foot radius of the pumphouse.

The water for the city comes directly from Ft. Loudoun Lake (Tennessee River Mile 649.4). The pump house is directly accessible by water and the city is concerned that the pump house is too susceptible to vandalism / terrorism and would like to restrict boaters within the immediate area. Recently fishermen in boats were found in the pump house area and were asked to leave. They refused and the city had no viable rule or law to utilize in removing the boaters from the area.

This emergency rule would provide the statutory authority to restrict persons from entering the secured area. In light of the recent events and the mood of the public regarding homeland security, the Commission feels that the Knoxville Utility Board is sound in their reasoning that the normal rule making process would not provide the immediate protection desired for the city water supply. Therefore, the Tennessee Wildlife Resources Commission feels the adoption of an emergency rule is justified and necessary.

For copies of the entire text of the proposed amendment, contact: Ed Carter, Chief of Boating, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204.

Ed Carter
Chief of Boating
Tennessee Wildlife Resources Agency

**RULE CHAPTER 1660-2-7
RULES AND REGULATIONS GOVERNING OPERATIONS OF VESSELS**

AMENDMENT

Rule 1660-2-7-.14 Ft. Loudoun Lake is amended by adding new paragraph (7), which shall read as follows:

- (7) All vessels are prohibited from operating within the designated zone near the City of Knoxville water intake. The area is in the vicinity of Tennessee River Mile 649.4.

Authority: *T.C.A. §§70-1-206 and 69-10-209.*

The emergency rules set out herein were properly filed in the Department of State on the 4th day of September, 2003, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 16th day of February, 2003. (09-07)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF HEALTH - 1200 HEALTH SERVICES ADMINISTRATION MATERNAL & CHILD HEALTH/NEWBORN SCREENING

CHAPTER 1200 15-1 PHENYLKETONURIA, HYPOTHYROIDISM AND OTHER METABOLIC/GENETIC DEFECTS

Presented herein are proposed amendments of the Department of Health, Bureau of Health Services Administration, submitted pursuant to Tennessee Code Annotated § 4 5 202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Bureau of Health Services Administration, 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 Bureau of Health Services Administration on the 4th Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee, 37247, and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee, 37243, and must be signed by twenty five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Margaret Major, MCH, Department of Health, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue, North, Nashville, Tennessee 37247 4701, (615) 741-8530.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-15-1 PHENYLKETONURIA, HYPOTHYROIDISM AND OTHER METABOLIC/GENETIC DEFECTS

TABLE OF CONTENTS

1200-15-1-.01 Tests	1200-15-1-.04 Local Health Departments Must Assist The Department Of Health
1200-15-1-.02 Institutions Responsible For Tests For Newborn Infants	1200-15-1-.05 Fee For Testing
1200-15-1-.03 Metabolic/Genetic Newborn Screening, Pamphlet Provided To Parents	1200-15-1-.06 Department Of Education And Department Of Health Responsibilities

Chapter 1200-15-1 is amended by deleting the existing text in its entirety and replacing it with the following new text.

1200-15-1-.01 TESTS.

The Department of Health will designate the prescribed effective screening tests and examinations which will be performed on the blood samples submitted in accordance with 1200-15-1-.02 for the detection of metabolic/genetic disorders in newborns. Tests are to be conducted for Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health. Results of the Newborn Hearing Screening, if conducted, are to be submitted in conjunction with the blood sample procedure for the detection of disorders in accordance with 1200-15-1-.02.

- (1) Exemptions for religious beliefs. Nothing in this part shall be construed to require the testing of or medical treatment for the minor child of any person who shall file with the Department of Health a signed, written statement that such tests or medical treatment conflict with such person's religious tenets and practices, affirmed under penalties of perjury pursuant to T.C.A. 68-5-403. The newborn screening refusal form provided by the State should be completed and retained in the medical record for the period of time defined by the hospital or provider policy.
- (2) Failure to have a child tested for the genetic/metabolic disorders is a Class C misdemeanor. Reporting of hearing screening is not to be construed as mandatory testing, therefore, failure to have a child tested for hearing loss will not be considered a misdemeanor pursuant to T.C.A.68-5-404.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

1200-15-1-.02 INSTITUTIONS RESPONSIBLE FOR TESTS FOR NEWBORN INFANTS.

The following persons or institutions shall be responsible for having tests made on newborn infants:

- (1) Every chief administrative officer of a hospital and the attending physician in each instance shall be responsible for submitting a specimen of blood to the State of Tennessee Laboratory, State Department of Health, in a manner as directed by the Department. This sample shall be collected before newborn infants are discharged from the nursery, regardless of age.
- (2) Every chief administrative officer of a hospital and the attending physician shall direct every parent, guardian, or custodian to bring the infant, if the infant was initially screened before twenty-four (24) hours of age, back to the hospital or to a physician or the nearest local health department to be re-screened for Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health, within twenty-four to forty-eight (24-48) hours after birth. In the case of a premature infant, an infant on parenteral feeding or any newborn treated for an illness, who is not discharged from the nursery in a timely manner, the sample should be collected not later than the infant's seventh (7th) day of age.
- (3) Any health care provider(s) of delivery services in a non-hospital setting shall be responsible for submitting a specimen of blood to the State of Tennessee Laboratory, or directing every parent, guardian, or custodian to bring the infant, between twenty-four to forty-eight (24-48) hours of age, to a hospital, physician or local health department to be screened for Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health.

- (4) Any parent, guardian, or custodian residing in Tennessee, of an infant born in Tennessee, outside a Tennessee health care facility and without the assistance of a health care provider, shall between twenty-four to forty-eight (24-48) hours of the birth of said infant present said infant to a physician or local health department for testing for the purpose of detecting Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health.
- (5) The original blood specimen shall be collected between twenty-four and forty-eight (24-48) hours of age. Repeat blood specimens shall be collected before two (2) weeks of age.
- (6) Every chief administrative officer of a hospital that performs physiologic newborn hearing screening shall be responsible for reporting the results of the newborn hearing screening test performed prior to discharge from the health care facility. Results of the hearing screening are to be reported to the Department of Health on the form designated for newborn screening blood spot collection or a similar form designated by the Department.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

1200-15-1-.03 METABOLIC/GENETIC NEWBORN SCREENING, PAMPHLET PROVIDED TO PARENTS.

The chief administrative officer of each hospital shall order the distribution of a pamphlet on Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health, to every parent, guardian or custodian of an infant screened for these conditions. The pamphlet, distributed by the Department of Health, educates and prepares the family for newborn testing on their infant. If an infant's screen was collected earlier than twenty-four (24) hours after birth and the patient is discharged home, the health care facility must review the information on the back of the pamphlet with the family, which requires them to present the infant to the hospital, physician or health department within 24-48 hours for a repeat screen. The pamphlet will have a perforated page that may be signed by the parent and placed in the medical record as documentation that the pamphlet was provided.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

1200-15-1-.04 LOCAL HEALTH DEPARTMENTS MUST ASSIST THE DEPARTMENT OF HEALTH.

Each local health department shall assist the Department of Health in contacting all cases suspected of having Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health to confirm or disprove the presumptive screening results based on the prescribed effective tests and examinations designed to detect genetic disorders as determined by the Department of Health.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

1200-15-1-.05 FEE FOR TESTING.

- (1) Fee. A fee of forty-seven dollars and fifty cents (\$47.50) shall be due and payable to the Department of Health for conducting any one or all of the following tests on a patient blood sample submitted to the Department for such testing: Biotinidase Deficiency, Congenital Adrenal Hyperplasia (CAH), Congenital Hypothyroidism, Galactosemia, Hemoglobinopathies, Homocystinuria, Maple Syrup Urine Disease (MSUD), Medium-Chain Acyl CoA Dehydrogenase (MCAD) Deficiency, Phenylketonuria (PKU), and other metabolic/genetic tests as designated by the Department of Health.
- (2) Procedure. The health care facility collecting the blood sample for the purpose of receiving any or all of the tests set forth in paragraph (1) shall be billed by the Department of Health State Laboratory.
- (3) Waiver. The fee shall be waived for patients who are unable to pay, based on information obtained at the time of admission to the health care facility, as determined by the health care provider.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

1200-15-1.06 DEPARTMENT OF EDUCATION AND DEPARTMENT OF HEALTH RESPONSIBILITIES.

- (1) In compliance with the Individuals with Disabilities Education Act (IDEA) Child Find, the Tennessee Department of Health Newborn Hearing Screening program shall notify the Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS) of all newborns identified by hearing screening to be in need of further hearing testing.
- (2) The Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS), shall contact the health care provider and/or family of the newborn to determine if further hearing testing has been completed or if the family is in need of assistance to obtain further testing to determine if there is a hearing loss.
- (3) The Department of Education, IDEA Part C, Tennessee Early Intervention System (TEIS) program shall report the results of follow-up to the Department of Health Newborn Hearing Screening program.
- (4) Reporting shall be coordinated with the Tennessee Early Intervention System (TEIS), Newborn Hearing Screening, and Children's Information Tennessee data systems. Tennessee Early Intervention System (TEIS) will submit follow-up data as outlined in policy developed in cooperation between the programs.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

REPEALS

Rules 1200-15-1-.01 through -.05 are repealed.

Authority: T.C.A. §§4-5-202, 68-5-401 et seq., and 68-5-501 et seq.

The proposed rules set out herein were properly filed in the Department of State on the 26th day of September, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2003. (09-29)

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

**CHAPTER 0800-1-9
HAZARDOUS CHEMICAL RIGHT TO KNOW**

Presented herein are proposed rules and amendments of the Department of Labor and Workforce Development, Division of Occupational Safety and Health submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules, amendments and repeals are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 26th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0293, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed rules, contact: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3rd Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

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

PROPOSED RULES

Chapter 0800-1-9 Hazardous Chemical Right to Know is amended by replacing the old chapter in its entirety with a new chapter which shall read as follows:

TABLE OF CONTENTS

0800-1-9-.01	Purpose and Scope	0800-1-9-.08	Prohibition of Discharge or Discrimination
0800-1-9-.02	Definitions	0800-1-9-.09	Trade Secrets
0800-1-9-.03	Notice	0800-1-9-.10	Firefighter Protection
0800-1-9-.04	Hazardous Chemical List	0800-1-9-.11	Workplace Chemical List
0800-1-9-.05	Material Safety Data Sheets	0800-1-9-.12	Recordkeeping and Reporting
0800-1-9-.06	Container Labeling and Other Forms of Warning	0800-1-9-.13	Public Information
0800-1-9-.07	Hazardous Chemical Education and Training	0800-1-9-.14	Contractors and Subcontractors

0800-1-9-.01 PURPOSE AND SCOPE.

- (1) Purpose. The purpose of this chapter and the rules thereof is to ensure that the hazards of chemicals stored or used in the State of Tennessee are evaluated, and that information concerning their hazards is transmitted to employers, employees, firefighting personnel and the general public through the Department of Labor and Workforce Development. The transmittal of information is to be accomplished by means of:
 - (a) Comprehensive hazard communication programs for employees, which are to include container labeling and other forms of warning, material safety data sheets (MSDS) and employee training.

- (b) Providing firefighters with a list of knowledgeable personnel to be contacted in emergencies, workplace chemical list(s) (WCL), access to establishments for inspection for the sole purpose of preplanning emergency fire department activities upon request, MSDS upon request and placarding buildings; and
 - (c) Providing the general public with WCL and other information upon request.
- (2) Scope. This chapter and the rules thereof shall apply to all employers in the State of Tennessee who store or use a hazardous chemical except their provisions shall not apply to:
- (a) Any article which is formed to a specific shape or design during manufacture, which has end use function(s) dependent in whole or in part upon its shape or design during end use, and which does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;
 - (b) Products intended for personal consumption by employees in the workplace;
 - (c) Retail food sale establishments and all other retail trade establishments, exclusive of processing, maintenance and repair areas;
 - (d) A workplace where a hazardous chemical is received in a sealed package and is subsequently sold or transferred in that package if the seal remains intact while the chemical is in the workplace and if the chemical does not remain in the workplace more than fourteen (14) calendar days except that the provisions of Rule 0800-1-9-.07 and Rule 0800-1-9-.10 shall apply except as stated therein;
 - (e) Any food, food additive, color additive, drug or cosmetic as such terms are defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or distilled spirits, wines or malt beverages as such terms are defined in the federal Alcohol Administration Act (27 U.S.C. 201 et seq.);
 - (f) A laboratory under the direct supervision or guidelines of a technically qualified individual; provided, that:
 1. Labels on containers of incoming chemicals shall not be removed or defaced;
 2. MSDS received shall be maintained and made accessible to employees and students;
 3. The provisions of Rules 0800-1-9-.07 and 0800-1-9-.10 are met; and
 4. The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes.
 - (g) The workplace of an agricultural employer or employer group if the Commissioner of Agriculture certifies to the Commissioner of Labor and Workforce Development that the chemicals are covered by other federal or state laws or regulations.

Authority: T.C.A. §§50-3-2007(a) and 50-3-2018.

0800-1-9-.02 DEFINITIONS.

- (1) “Administrator” means the chief administrative officer of the Division of Occupational Safety and Health of the Department of Labor and Workforce Development, and includes any person appointed, designated or deputized to perform the duties or to exercise the powers assigned to the Administrator of the Division of Occupational Safety and Health under the Act.
- (2) “Commissioner” means the Commissioner of Labor and Workforce Development or his designee (i.e., the Division of Occupational Safety and Health or a professional employee thereof).
- (3) “Employee” means a worker employed by an employer in a workplace, including minors, whether lawfully or unlawfully employed, who may be exposed to hazardous chemicals under normal operating conditions or foreseeable emergencies, including, but not limited to production workers, line supervisors and repair or maintenance personnel. Office workers, ground maintenance personnel, security personnel or nonresident management are generally not included unless their job performance routinely involves potential exposure to hazardous chemicals. For the purposes of this chapter, “employee” includes persons working for the State of Tennessee, its political subdivisions, and members of volunteer fire departments.
- (4) “Employer” means a person engaged in a business who has one (1) or more employees and where chemicals are either used or are produced for use or distribution. For the purposes of this chapter, the term “employer” includes the State of Tennessee, its political subdivisions, and volunteer fire departments.
- (5) “Establishment” means single physical location where business is conducted or where services or industrial operations are performed. There may be one (1) or more work areas within an establishment.
- (6) “Fire Chief” means the chief of the fire department having jurisdiction over an establishment, workplace or worksite.
- (7) “Manufacturing employer” means an employer with a workplace classified in NAICS Sector 31 – 33 (NAICS 2002 - The North American Industry Classification System—United States, 2002 Edition; Executive Office of the President - Office of Management and Budget) who manufactures or uses a hazardous chemical.
- (8) “Nonmanufacturing employer” means any employer with a workplace classified in any NAICS sector other than Sector 31 - 33 where hazardous chemicals are used or stored for use in the State of Tennessee, its political subdivisions, and all volunteer fire departments.
- (9) “OSHA standard” means the Hazard Communication Standard issued by the Occupational Safety and Health Administration codified under Title 29 of the Code of Federal Regulations (CFR) Part 1910.1200. It may also mean where the text of a rule in this chapter clearly requires such meaning, any other standard issued by the Occupational Safety and Health Administration; codified in Title 29, Code of Federal Regulations, Parts 1910, 1926, or 1928; and adopted by the Commissioner in Chapters 0800-1-1, 0800-1-6, or 0800-1-7, of the Official Compilation, Rules and Regulations of the State of Tennessee.
- (10) “Workplace chemical list (WCL)” means the list of hazardous chemicals developed pursuant to Rule 0800-1-9-11 of this chapter.
- (11) “Worksite” means a geographical location where construction operations are conducted containing one (1) or more work areas. A building under construction shall be termed a “worksite” until all construction work is completed and it is occupied. At that time, the terms “establishment” or “workplace” shall be applied. A “worksite” may cover a significantly greater area than an “establishment” or “workplace” such as in highway construction.

Authority: *T.C.A. §§50-3-2003 and 50-3-2007(a).*

0800-1-9-.03 NOTICE. Each nonmanufacturing employer shall post and keep posted a notice as required by Rule 0800-1-4-.03(1), to be furnished by the Department of Labor and Workforce Development, informing employees of their rights and protections provided.

Authority: T.C.A. §§50-3-2005 and 50-3-2007(a).

0800-1-9-.04 HAZARDOUS CHEMICAL LIST. The Commissioner shall maintain a list of hazardous chemicals as required by T.C.A. §50-3-2006. No manufacturing or nonmanufacturing employer shall be relieved of any duty, responsibility or liability under the Hazardous Chemical Right to Know Act, 29 CFR 1910.1200, or the rules of this chapter relative to any hazardous chemical which is not included on such list.

Authority: T.C.A. §§50-3-2006 and 50-3-2007(a).

0800-1-9-.05 MATERIAL SAFETY DATA SHEET(S).

- (1) Employers are required to comply with 29 CFR 1910.1200(g) MSDS as well as the following:
 - (a) If an MSDS has not been provided by the chemical manufacturer or distributor for chemicals on the WCL (see Rule 0800-1-9-.11) at the time the chemicals are received at the workplace, the nonmanufacturing employer shall request one in writing from the chemical manufacturer or distributor within five (5) business days. Records of such requests shall be maintained for a period of three (3) years following the year in which the request was made.
 - (b) If an MSDS for a hazardous chemical is not readily available, upon request, as required by 29 CFR 1910.1200(g), an employee or an individual to whom such employee has given written authorization or a recognized or certified collective bargaining agent for the employees of the workplace involved may submit a written request for the MSDS to the employer. Such employer shall furnish a copy of the MSDS to the requestor within three (3) business days of receipt of the request.
 - (c) If the requested MSDS is not in the employer's possession, the employer shall, within three (3) business days of receipt of the request, demonstrate to the requestor that an effort has been made to obtain the MSDS from the supplier, manufacturer, the Department of Labor and Workforce Development, or other source.
 - (d) If, at the end of a two (2) week period [fourteen (14) calendar days from the date the request for the MSDS was received by the employer], the employer is still unable to obtain the requested MSDS, the employee shall not be required to work with the hazardous chemical for which the MSDS was requested until the MSDS is furnished, unless the employer can demonstrate to the employee or his/her representative that the MSDS will be forthcoming by a date specified by the employer or that the information cannot be obtained through no fault of the employer.
 - (e) If, on the date specified by the employer, the MSDS is still unavailable, the employee shall not be required to work with the hazardous chemical for which the MSDS is still unavailable.
 - (f) In accordance with Rule 0800-1-9-.08, the employee shall not be penalized for this action. Reassignment of an employee to other work, at equal pay and benefits, shall not be considered a penalty under this paragraph.

Authority: T.C.A. §§50-3-2007(a) and 50-3-2008.

0800-1-9-.06 CONTAINER LABELING AND OTHER FORMS OF WARNING.

- (1) Employers are required to comply with 29 CFR 1910.1200(f) Labels and other forms of warning.
- (2) Employers shall ensure that work areas in which non-containerized hazardous chemicals are generated or produced as a result of the process or operation taking place in such work area (e.g., welding fumes, carbon monoxide from powered industrial trucks exhaust, etc.) contain a sign or placard identifying the hazardous chemical(s) and appropriate hazard warnings.
- (3) Employees shall not be required to work with a hazardous chemical from an unlabeled container or in an unsigned or unplacarded work area containing a hazardous chemical produced as a result of the process or operation in such work area except as provided in 29 CFR 1910.1200(f).

Authority: T.C.A. §§50-3-2007(a) and 50-3-2009.

0800-1-9-.07 HAZARDOUS CHEMICAL EDUCATION AND TRAINING. Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area. Refresher training shall be provided at least annually thereafter.

- (1) Information. Employees shall be informed of:
 - (a) The requirements of this rule or 29 CFR 1910.1200, as applicable;
 - (b) Any operations in their work area where hazardous chemicals are or may be present; and
 - (c) The location and availability of the written hazard communication program required by 29 CFR 1910.1200(e) including the required lists of hazardous chemicals required by 29 CFR 1910.1200(e)(1)(i) and/or Rule 0800-1-9-.11, and MSDS required by 29 CFR 1910.1200(g) and/or Rule 0800-1-9-.05.
- (2) Training. Employee training shall include at least the training requirements of 29 CFR 1910.1200(h) and:
 - (a) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
 - (b) The physical and health hazards of the chemicals in the work area;
 - (c) The measures employees can take to protect themselves from the hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures and personal protective equipment to be used;
 - (d) General safety instructions on the handling, cleanup, and disposal of hazardous chemicals; and
 - (e) The details of the hazard communication program developed by the employer including an explanation of the labeling system and the MSDS, and how employees can obtain and use the appropriate hazard information.
- (3) Training Evaluation. Training required by this rule and/or 29 CFR 1910.1200(h)(3) shall ensure that employees who may be functionally illiterate or who have problems reading and understanding English are appropriately informed and trained in accordance with this rule. Effectiveness of training shall be measured by adequacy of reasonable basic and simple verbal recall by the employee of information re-

quired by paragraph (2) of this rule. During the course of inspections or investigations, compliance officers shall evaluate training through employee interviews.

- (4) Manufacturing and nonmanufacturing employers shall maintain records of training conducted pursuant to this rule. Such records shall be made available to the Commissioner and his agents upon request and shall contain, as a minimum:
 - (a) Identification (by name, SSN, clock number, or other method) of the employee to whom training was given;
 - (b) The date(s) of training; and
 - (c) A brief description of the training given [e.g., symptoms of CO (carbon monoxide) poisoning, H₂SO₄ (sulfuric acid) emergency procedures, etc.].

Authority: T.C.A. §§50-3-2007 and 50-3-2010.

0800-1-9-.08 PROHIBITION OF DISCHARGE OR DISCRIMINATION.

- (1) No employer shall discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has taken or performed one or more of the actions or exercised rights, explicit or implicit, set forth in T.C.A. §§50-3-2001 through 50-3-2019, either on such employee's own behalf or on behalf of others.
- (2) Any employee who believes he or she has been discharged or discriminated against contrary to the provision of paragraph (1) of this rule and/or T.C.A. §50-3-2012(b) may, within thirty (30) days following discharge or discriminatory action by the employer, file a complaint with the Commissioner alleging such unlawful discharge or discrimination.

Authority: T.C.A. §§50-3-2007(a), 50-3-2012(b) and 50-3-2016(c).

0800-1-9-.09 TRADE SECRETS.

- (1) An employer or distributor who believes that all or any part of the information required on an MSDS, WCL, or furnished to the fire chief having jurisdiction is a trade secret as defined by 29 CFR 1910.1200 may withhold the information provided that they meet the requirements of 29 CFR 1910.1200(i), and:
 - (a) All relevant hazard information on any trade secret chemical is provided to the fire chief having jurisdiction and/or appropriate emergency response department;
 - (b) The WCL provided to the fire chief having jurisdiction indicates that the specific chemical identity is being withheld as a trade secret.
- (2) If the chemical manufacturer, importer, distributor or employer denies an emergency request for disclosure of a specific chemical identity, was omitted, the treating physician or nurse shall inform the Commissioner of such denial as soon as possible and shall, at the same time, justify the emergency need for the request. If a bona fide need and emergency situation is determined to exist, the Commissioner shall immediately contact the chemical manufacturer, importer, distributor or employer who denied the emergency request and attempt to obtain the information needed by the treating physician or nurse. If such attempt is not successful, the Commissioner shall immediately initiate the following actions:

- (a) Determine if the information needed by the treating physician's or nurse's emergency request is readily available from resource information or data maintained by the Division of Occupational Safety and Health and, if so, provide it to the treating physician or nurse.
 - (b) Initiate action for injunctive relief pursuant to T.C.A. §§50-3-2016(c) and 50-3-401(a) in order to obtain the information and, if successful, provide it to the treating physician or nurse.
- (3) The Commissioner and his agents shall protect from disclosure any or all information coming into his possession under the provisions of this rule when such information is marked by the chemical manufacturer, importer, distributor or employer as confidential or trade secret and shall return all information as marked to the employer at the conclusion of his determination. Such information shall not be disclosed during any administrative or judicial proceeding. Administrative hearings held shall not be open to public observation pursuant to Tennessee Code Annotated, Title 8, Chapter 44, and any judicial proceedings relative to such information shall be held in camera. Any information which is marked confidential shall not be considered a "public record" pursuant to Tennessee Code Annotated, Title 10, Chapter 7. Violations of the provisions of this rule shall be prosecuted under the provisions of T.C.A. §50-3-504.

Authority: T.C.A. §§50-3-2007(a), 50-3-2013, 50-3-2016(c), 50-3-401(a), and 50-3-504.

0800-1-9-.10 FIREFIGHTER PROTECTION.

- (1) The provisions of this rule apply to all employers who normally store hazardous chemicals in excess of the quantities set forth below except as provided in paragraphs (11) or (12).
 - (a) For those hazardous chemicals in a liquid state at standard atmospheric temperature and pressure (70°F at 14.7 psi or 21.11°C at 1.0335 kg/sq cm) - 55 gallons or 208.198 liters.
 - (b) For those hazardous chemicals in a solid state at standard atmospheric temperature and pressure (70°F at 14.7 psi or 21.11°C at 1.0335 kg/sq cm) - 500 pounds or 226.796 kilograms.
 - (c) For those hazardous chemicals in a gaseous state at standard atmospheric temperature and pressure (70°F at 14.7 psi or 21.11°C at 1.0335 kg/sq cm):
 - 1. Would be in excess of the Short Term Exposure Limit (STEL) set forth in the American Conference of Governmental Industrial Hygienists (ACGIH) table of Threshold Limit Values (TLV) and Biological Exposure Indices (BEI) or the ceiling value set forth in Rule 0800-1-1-.07(2)(b) if allowed to occupy a volume of 35.31 cubic feet or one (1) cubic meter, or
 - 2. Would be in excess of the TLV set forth in the ACGIH table of TLVs and BEIs or the 8-hour time weighted average (8-hr TWA) permissible exposure limit (PEL) set forth in Rule 0800-1-1-.07(2)(b) if allowed to occupy a volume of 35.31 cubic feet or one (1) cubic meter, or
 - 3. Which is flammable gas, or
 - 4. If such gas does not meet the definition of hazardous chemical as set forth 29 CFR 1910.1200 and is normally stored as a compressed gas in four (4) cylinders of 239 pounds nominal water capacity.
- (2) Employers shall provide the fire chief having jurisdiction over the workplace, in writing, the name(s) and telephone number(s) of knowledgeable representative(s) who can be contacted for further information or in an emergency.

- (3) Employers shall provide the fire chief having jurisdiction over the workplace with a copy of the WCL and shall thereafter notify the fire chief, in writing, of any significant changes that occur in the WCL.
- (4) Employers shall, upon written request of the fire chief having jurisdiction over the workplace, provide a copy of the MSDS for any chemical on their WCL.
- (5) Employers whose workplace occupies an entire building or structure shall place one (1) sign on the outside of any building which contains a hazardous chemical listed in subparagraphs (a) through (e) of this paragraph.
 - (a) Class A or B explosives (Note: Where buildings contain magazines for Class A or B explosives, the sign required by this rule shall be so located that a bullet passing through the face of the sign will not strike the magazine.);
 - (b) Poison gas (poison A);
 - (c) Water-reactive flammable solid;
 - (d) Radioactive material as listed in the table in 49 CFR 172 and further defined in 49 CFR 173; or
 - (e) Any other hazardous chemical in excess of the quantities listed in subparagraphs (a), (b), and (c) of paragraph (1), and parts 1., 2., and 3. of subparagraph (c) of paragraph (1).
- (6) Owners and/or leasing agents of buildings or structures occupied by tenants required to comply with paragraph (5) of this rule except for the fact they do not occupy the entire building or structure shall be responsible for placing one (1) sign on the outside of any building whose occupants would have to place such sign were they the sole occupant.
- (7) Where an establishment consists of more than one (1) building or structure at the same physical location, one (1) sign is required for each building or structure.
- (8) Signs required by paragraphs (5), (6), and (7) of this rule shall:
 - (a) Be comprised of four (4) squares, each measuring seven and one-half (7 1/2) inches per side and arranged to form a square with fifteen (15) inch sides with diagonals horizontal and vertical;
 - (b) the top square shall have a signal red background to identify a “flammability” hazard and a black or white numeral six (6) inches (15.24 cm) high, four and two-tenths (4.2) inches (10.67 cm) wide, and fifteen-sixteenths (15/16) of an inch (2.38 cm) thick centered in the square to indicate the degree of hazard as follows:
 1. The numeral “4” shall be used to indicate material which will rapidly or completely vaporize at atmospheric pressure and normal ambient temperature or which are readily dispersed in air, and which will burn readily. This degree includes:
 - (i) Gases;
 - (ii) Cryogenic materials;
 - (iii) Any liquid or gaseous material which is a liquid while under pressure and having a flashpoint below 73°F (22.8°C) and having a boiling point below 100°F (37.8°C). [Class IA flammable liquids pursuant to 29 CFR 1910 .106(a)(19)(i) and NFPA 30.];

- (iv) Materials on account of their physical form or environmental condition can form explosive mixtures with air and which are readily dispersed in air, such as dusts of combustible solids and mists of flammable or combustible liquid droplets.
2. The numeral “3” shall be used to indicate liquids or solids that can be ignited under almost all ambient temperature conditions. Materials in this degree produce hazardous atmospheres with air under almost all ambient temperatures or, though unaffected by ambient temperatures, are readily ignited under almost all conditions. This degree includes:
- (i) Liquids having a flashpoint below 73°F (22.8°C) and having a boiling point at or above 100°F (37.8°C) and those liquids having a flashpoint at or above 73°F (22.8°C) and below 100°F (37.8°C). [Class 1B and Class 1C flammable liquids pursuant to 29 CFR 1910.106(a)(19)(ii) and (iii) and NFPA 30.];
 - (ii) Solid materials in the form of coarse dusts which may burn rapidly but which generally do not form explosive atmospheres with air;
 - (iii) Solid materials in a fibrous or shredded form which may burn rapidly and create flash fire hazards, such as cotton, sisal and hemp;
 - (iv) Materials which burn with extreme rapidity, usually by reason of self-contained oxygen (e.g., dry nitrocellulose and many organic peroxides);
 - (v) Materials which ignite spontaneously when exposed to air.
3. The numeral “2” shall be used to indicate materials that must be moderately heated or exposed to a relatively high ambient temperature before ignition can occur. Materials in this degree would not under normal conditions form hazardous atmospheres with air, but under high ambient temperatures or under moderate heating may release vapor in sufficient quantities to produce hazardous atmospheres with air. This degree includes:
- (i) Liquids having a flashpoint above 100° F (37.8° C), but not exceeding 200° F (93.33° C). [(Class II and Class IIIA combustible liquids pursuant to 29 CFR 1910.106(a)(18)(i), (ii), and (ii)(a) and NFPA 30.];
 - (ii) Solids and semisolids which readily give off flammable vapors.
4. The numeral “1” shall be used to indicate materials that must be preheated before ignition can occur. Materials in this degree require considerable preheating, under all ambient temperature conditions, before ignition and combustion can occur. This degree includes:
- (i) Materials which will burn in air when exposed to a temperature of 1500° F (815.56° C) for a period of five (5) minutes or less;
 - (ii) Liquids, solids, and semisolids having a flashpoint above 200° F (93.33° C);
 - (iii) Most ordinary combustible materials.
5. The numeral “0” shall be used to indicate materials that will not burn. This degree includes any material which will not burn in air when exposed to a temperature of 1500° F (815.56° C) for a period of five (5) minutes.

- (c) The left square shall have a signal blue background to identify a “health hazard” and a black or white numeral six (6) inches (15.24 cm) high, four and two-tenths (4.2) inches (10.67 cm) wide, and fifteen-sixteenths (15/16) of an inch (2.38 cm) thick centered in the square to indicate the degree of hazard as follows:
1. The numeral “4” shall be used to indicate materials which on very short exposure could cause death or major residual injury even though prompt medical treatment were given, including those which are too dangerous to be approached without specialized protective equipment. This degree includes:
 - (i) Materials which can penetrate ordinary rubber protective clothing used by firefighters;
 - (ii) Materials under normal conditions or under fire conditions give off gases which are extremely hazardous (i.e., toxic or corrosive) through inhalation or through contact with or absorption through the skin.
 2. The numeral “3” shall be used to indicate materials which on short exposure could cause serious temporary or residual injury even though prompt medical treatment were given, including those requiring protection from all bodily contact. This degree includes:
 - (i) Materials giving off highly toxic combustion products;
 - (ii) Materials corrosive to living tissue or toxic by skin absorption.
 3. The numeral “2” shall be used to indicate materials which on intense or continued exposure could cause temporary incapacitation or possible residual injury unless prompt medical treatment is given, including those requiring use of respiratory protective equipment with independent air supply. This degree includes:
 - (i) Materials giving off toxic combustion products;
 - (ii) Materials giving off highly irritating combustion products;
 - (iii) Materials which either under normal conditions or under fire conditions give off toxic vapors lacking warning properties.
 4. The numeral “1” shall be used to indicate materials which on exposure would cause irritation but only minor residual injury even if no treatment is given, including those which require use of an approved canister type respirator. This degree includes:
 - (i) Materials which under fire conditions would give off irritating combustion products;
 - (ii) Materials which on the skin could cause irritation without destruction of tissue.
 5. The numeral “0” shall be used to indicate materials which on exposure under fire conditions would offer no hazard beyond that of ordinary combustible material.
- (d) The right square shall have a signal yellow background to identify a “reactivity (instability) hazard” and a black numeral six (6) inches (15.24 cm) high, four and two-tenths (4.2) inches (10.67 cm) wide, and fifteen-sixteenths (15/16) of an inch (2.38 cm) thick centered in the square to indicate the degree of hazard as follows:

1. The numeral “4” shall be used to indicate materials which in themselves are readily capable of detonation or of explosive decomposition or explosive reaction at normal temperatures and pressures. This degree includes materials which are sensitive to mechanical or localized thermal shock at normal temperatures and pressures.
 2. The numeral “3” shall be used to indicate materials which in themselves are capable of detonation or of explosive decomposition or explosive reaction but which require a strong initiating source or which must be heated under confinement before initiation. This degree includes:
 - (i) Materials which are sensitive to thermal or mechanical shock at elevated temperatures and pressures;
 - (ii) Materials which react explosively with water without requiring heat or confinement.
 3. The numeral “2” shall be used to indicate materials which in themselves are normally unstable and readily undergo violent chemical change but do not detonate. This degree includes:
 - (i) Materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures;
 - (ii) Materials which can undergo violent chemical change at elevated temperatures and pressures;
 - (iii) Materials which may react violently with water or which may form potentially explosive mixtures with water.
 4. The numeral “1” shall be used to identify materials which in themselves are normally stable, but which can become unstable at elevated temperatures and pressures or which may react with water with some release of energy but not violently.
 5. The numeral “0” shall be used to identify materials which in themselves are normally stable, even under fire exposure conditions, and which are not reactive to water.
- (e) The bottom square shall have a white background to identify unusual hazards (e.g., water reactivity, radioactivity) or additional information for firefighter protection (e.g., proper fire extinguishing agent or protective equipment required). Some common symbols used and their specifications are:
1. Water reactive material is indicated by the letter “W” with a line through the center ($\text{\textcircled{W}}$). It shall be black, six (6) inches (15.24 cm) high, four and two-tenths (4.2) inches (10.67 cm) wide, and fifteen-sixteenths (15/16) of an inch (2.38 cm) thick and shall be centered in the square.
 2. Radioactivity is indicated by the conventional three-bladed symbol and shall be magenta or purple in color (see 29 CFR 1910.1096.(e)(1)(i)). The symbol shall be six (6) inches (15.24 cm) in diameter and centered in the square.
 3. Oxidizers are indicated by the letters “OXY.” The letters shall be black, four (4) inches (10.16 cm) high, two and eight-tenths (2.8) inches (7.11 cm) wide, and five-eighths (5/8) of an inch (1.6 cm) thick, extend equidistant above and below the horizontal diagonal, and have the center of the letter “X” coincide with the center of the square.

4. When both the water reactive symbol and another symbol such as the oxidizer are required (e.g., for potassium peroxide, K_2O_2 , or sodium peroxide, Na_2O_2), the “W” shall be centered on the vertical diagonal with its base one-half (1/2) inch (1.3 cm) above the horizontal diagonal and the letters “OXY” centered on the vertical diagonal with their tops one-half (1/2) inch (1.3 cm) below the horizontal diagonal and they shall be three (3) inches (7.62 cm) high, two and one-tenth (2.1) inches (5.33 cm) wide, and fifteen-thirty seconds (15/32) of an inch (1.19 cm) thick.
 5. Other hazard warnings and instructions shall be composed of black letters and/or numbers not less than three (3) inches (7.62 cm) high, two and one-tenth (2.1) inches (5.33 cm) wide, and fifteen-thirty seconds (15/32) of an inch (1.19 cm) thick.
- (9) The sign or signs required by paragraphs (5), (7), and (8) of this rule shall indicate only the highest hazard in each category (flammability, health and reactivity) by the hazardous chemicals used or stored within the building. Special warnings and instructions included on the sign shall also be based upon the hazardous chemical which poses the highest hazard requiring them. If there is a question as to what is required, the Commissioner after consultation with the fire chief having jurisdiction, shall make the determination as to the symbol, numeral, or instruction to be displayed on the sign.
 - (10) Employers shall, upon request of the fire chief having jurisdiction, permit on-site inspections by firefighting personnel of the hazardous chemicals on the WCL for the purpose of preplanning emergency fire department activities. Such inspections shall be conducted during normal business hours. See also T.C.A. §68-102-130.
 - (11) If an employer maintains a trained fire or emergency preparedness team considered capable of handling workplace chemical or fire emergencies without external assistance, he/she may request an exemption from any or all provisions of this rule provided:
 - (a) The firefighting team is in compliance with all provisions of 29 CFR 1910.156 Fire brigades. Compliance shall be ascertained through a special purpose inspection conducted by an agent of the Division of Occupational Safety and Health following receipt of the employer’s request for exemption. Advance notice of such inspection may be given no more than twenty-four (24) hours in advance of the scheduled arrival time at the employer’s establishment in accordance with Rule 0800-1-4-.07(1)(d), and the employer shall give notice to employees and/or their authorized representative pursuant to the provisions of Rule 0800-1-4-.07(2).
 - (b) The fire or emergency preparedness team is determined capable of handling workplace chemical emergencies. Whenever practicable, the Tennessee Emergency Management Agency (TEMA) shall be consulted prior to making such determination.
 - (c) The request for exemption is made in writing to the Administrator and contains the name and address of the fire chief having jurisdiction.
 - (d) Prior to granting a request for exemption from the provisions of this rule, the Administrator shall consult with TEMA and the fire chief having jurisdiction to ascertain that the conditions for granting an exemption are met.
 - (e) Exemptions granted by the Commissioner may be partial or complete and may contain additional requirements as deemed necessary to afford protection to firefighters.

- (12) Employers who maintain twenty-four (24) hour security personnel who maintain accurate records as to location of chemicals and who can readily direct emergency personnel from outside sources to affected company facilities may request an exemption from the provisions of paragraphs (2), (3), (4), (5), (7), (8), (9), or (10) of this rule provided:
- (a) The request for exemption is made in writing to the Administrator and contains the name and address of the fire chief having jurisdiction.
 - (b) Prior to granting a request for exemption under this paragraph, the Administrator shall obtain the concurrence of the fire chief having jurisdiction.

Authority: T.C.A. §§50-3-2007(a) and 50-3-2014.

0800-1-9-.11 WORKPLACE CHEMICAL LIST.

- (1) Content. WCL shall be compiled, maintained, and updated by all employers, and shall contain the following information for each hazardous chemical known to be present in the workplace:
- (a) Employer name and mailing address;
 - (b) Workplace location if different than mailing address;
 - (c) Employer's primary Standard Industrial Classification (SIC) Code;
 - (d) Employer's federal employer identification number;
 - (e) A brief description of the workplace operation. Examples of such description would include but not be limited to:
 - 1. Galvanizing commercial wire gratings.
 - 2. Fabrication and forming of steel parts.
 - 3. Spray and electrostatic painting.
 - 4. Warehouse shipping, receiving, and storage.
 - 5. Welding steel and aluminum.
 - (f) The chemical name or common name used on the MSDS and/or the container label;
 - (g) The chemical abstracts service number for each hazardous chemical listed if such number is known or included on the MSDS; and
 - (h) The work area or workplace in which the hazardous chemical is normally used, stored, or generated. A separate WCL may be compiled for separate or distinct work areas or workplaces within an establishment.
- (2) Filing of the Workplace Chemical List.
- (a) Employers shall file the WCL with the Commissioner within ninety-six (96) hours of a request for the employer's list by an authorized representative of the Commissioner.

- (b) The method of delivery can be through any means as long as it arrives at any area office of the Division of Occupational Safety and Health within the time frame specified in subparagraph (a) of paragraph (2).
- (c) Nonmanufacturing employers' lists shall contain the information required by paragraph (1) of this rule only for those hazardous chemicals used or stored in the workplace in excess of:
 1. 55 gallons (208.198 liters) if such chemical is in a liquid state at standard atmospheric temperature and pressure (70° F at 14.7 psi or 21.11° C at 1.0335 kg/sq cm).
 2. 500 pounds (226.796 kilograms) if such chemical is in a solid state at standard atmospheric temperature and pressure (70° F at 14.7 psi or 21.11° C at 1.0335 kg/sq cm).
 3. If such chemical is in a gaseous state at standard atmospheric temperature and pressure (70° F at 14.7 psi or 21.11° C at 1.0335 kg/sq cm), any quantity in excess of:
 - (i) The STEL set forth in the ACGIH table of TLVs and BEIs or the ceiling value set forth in Rule 0800-1-1-.07(2)(b) if allowed to occupy a volume of 35.31 cubic feet or one (1) cubic meter, or
 - (ii) The TLV set forth in the ACGIH table of TLVs or the 8-hr TWA PEL set forth in Rule 0800-1-1-.07(2)(b) if allowed to occupy a volume of 35.31 cubic feet or one (1) cubic meter, or
 - (iii) Four (4) cylinders of 239 pounds nominal water capacity if such gas is normally stored as a compressed gas in cylinders, or
 - (iv) One-tenth (0.1) cubic foot (2831.26 cm³) of pure gas if the gas is a "flammable gas" as defined in 29 CFR 1910.1200(c).
- (3) Maintenance. Employers shall maintain a copy of each WCL in the workplace to which it pertains. New and newly assigned employees shall be made aware of the WCL before being required to work in a work area containing hazardous chemicals.
- (4) Hazard Determination. Except for chemical manufacturers and importers, employers are not required to evaluate chemicals listed on the WCL unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for those hazardous chemicals not generated in the workplace. For all hazardous chemicals generated in the workplace, however, and for those on which the employer does not rely on the evaluation performed by the chemical manufacturer or importer, the employer shall make a hazard determination in accordance with 29 CFR 1910.1200(d).
- (5) Access.
 - (a) A copy of each WCL filed with the Department of Labor and Workforce Development shall be available for inspection by the public during regular office hours at any area office of the Division of Occupational Safety and Health. Copies shall be made available upon payment, by check or money order payable to "Treasurer, State of Tennessee," of a copying fee of twenty five cents (\$0.25) per page.

- (b) Copies of any WCL may be obtained from the Division of Occupational Safety and Health upon written request and payment, by check or money order payable to “Treasurer, State of Tennessee,” of a copying fee of twenty five cents (\$0.25) per page plus postage. The Department of Labor and Workforce Development shall provide such list within ten (10) business days of receipt of the written request.

Authority: *T.C.A. §§50-3-2007 and 50-3-2015.*

0800-1-9-.12 RECORDKEEPING AND REPORTING.

- (1) MSDS concerning the identity of a hazardous chemical shall be retained as long as the employer uses or stores the chemical. As long as some record of the identity of the hazardous chemical, where it was used; and when it was used, is retained for at least thirty (30) years (e.g., WCL), an MSDS need not be retained after termination of its use or storage. If no other record is maintained, the MSDS shall be retained for thirty (30) years.
- (2) Training records shall be maintained for the period an employee is employed plus five (5) years.
- (3) Correspondence relating to trade secrets (see Rule 0800-1-9-.09) shall be maintained for five (5) years after the date of the last item relating to the claim or issue.
- (4) Correspondence relating to exemptions from Rule 0800-1-9-.10 shall be maintained as long as the exemption is in effect plus one (1) year.
- (5) Employers shall maintain copies of WCL for thirty (30) years following the effective period of the WCL. If the employer generating a WCL ceases to operate a business in the State of Tennessee, copies of all WCL shall be sent to the Commissioner, Attention: Division of Occupational Safety and Health, within ninety (90) days following cessation of business. The WCL shall then be maintained by the Department of Labor and Workforce Development for the required thirty (30) years.

Authority: *T.C.A. §§50-3-2007(a) and 50-3-2015.*

0800-1-9-.13 PUBLIC INFORMATION.

- (1) Upon written request, the public may obtain a copy of the “Notice” required by Rule 0800-1-9-.03.
- (2) Upon written request and payment of a copying fee and postage, the public may also obtain the following:
 - (a) Hazardous Chemical Lists (see Rule 0800-1-9-.04).
 - (b) Hazardous Chemical Right to Know Law.
 - (c) Hazard Communication Standard, 29 CFR 1910.1200 or 1926.59.
 - (d) Generic MSDS.
 - (e) MSDS on specific chemicals manufactured by specific manufacturers. The chemical and/or trade name, and manufacturer’s name and address must be included in the request. Sixty (60) days shall be allowed to fill the request.

Authority: *T.C.A. §§4-5-218(4)(b), 50-3-904(4), 50-3-2007(a) and 50-3-2015.*

0800-1-9-.14 CONTRACTORS AND SUBCONTRACTORS.

- (1) In addition to other requirements of this chapter, contractors and subcontractors who introduce hazardous chemicals into the workplace shall provide all other parties to the contract an MSDS for each such chemical five (5) working days prior to its introduction.
- (2) Contractors and subcontractors who introduce hazardous chemicals into the workplace shall not be held responsible for compliance with the requirements of Rule 0800-1-9-.07 for employees of other contractors or subcontractors at the workplace. Provision of education and training for employees of other contractors or subcontractors may be required by the contract but each contractor or subcontractor shall be held responsible for education and training of only their own employees.
- (3) Contractors and subcontractors may comply with the requirements of Rule 0800-1-9-.11 by maintaining one (1) master WCL appropriate for all workplaces where they are performing work providing that the workplace location required by subparagraph (b) of paragraph (1) of that rule is provided on that master list.

Authority: T.C.A. §§50-3-2007(a), (c)(1), (2) and (3).

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

AMENDMENTS

Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by deleting paragraph (10) Recording criteria for cases involving work-related musculoskeletal disorders in its entirety.

Authority: T.C.A. §§ 4-3-1411, 50-3-701, 50-3-702 and 50-3-917.

Subpart (vi) of part 7. of subparagraph (b) of paragraph (27) of Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by deleting the words, “independently and” from the first sentence and by deleting the second sentence in its entirety, so that the amended rule shall read:

- (vi) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

Authority: T.C.A. §§ 4-3-1411, 50-3-701, 50-3-702 and 50-3-917.

Part 7 of subparagraph (b) of paragraph (27) of Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by deleting subpart (vii) in its entirety.

Authority: T.C.A. §§ 4-3-1411, 50-3-701, 50-3-702 and 50-3-917.

The proposed rules set out herein were properly filed in the Department of State on the 18th day of September, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2004. (09-20)

**THE TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800**

**CHAPTER 0800-3-1
BEDDING AND STERILIZATION**

Presented herein are proposed repeals of the Department of Labor and Workforce Development, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these repeals 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 repeals are published. Such petition to be effective must be filed in the Legal Division of the Department of Labor and

Workforce Development, Andrew Johnson Tower, 2nd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243, and in the Administrative Procedures Division of the Department of State, William R. Snodgrass Tennessee Tower, 8th Floor, 312 8th Avenue North, Nashville, Tennessee 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the repeals, or submitted by a municipality which will be affected by the repeals, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed repeals, contact Sydné Ewell, Legal Counsel, Tennessee Department of Labor and Workforce Development, Legal Division, Andrew Johnson Tower, 2nd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243, telephone: 615. 741.4356.

The text of the proposed repeals is as follows:

REPEALS

- Rule 0800-3-1-.01 Definitions is repealed
- Rule 0800-3-1-.02 Administration is repealed.
- Rule 0800-3-1-.03 Application of the Act is repealed.
- Rule 0800-3-1-.04 Labeling is repealed.
- Rule 0800-3-1-.05 Sterilization is repealed.
- Rule 0800-3-1-.06 Regulations is repealed.
- Rule 0800-3-1-.07 Enforcement is repealed.
- Rule 0800-3-1-.08 Regulations for Sterilization is repealed.
- Rule 0800-3-1-.09 Cotton is repealed.
- Rule 0800-3-1-.10 Feathers and Down is repealed.
- Rule 0800-3-1-.11 Miscellaneous Filing Materials is repealed.
- Rule 0800-3-1-.12 Attachment of Labels is repealed.

Rule 0800-3-1-.13 Sterilization Record Book is repealed.

Authority: T.C.A §4-3-1411, and Acts 1983, ch.373, § 1.

**CHAPTER 0800-3-11
PRIVATE EMPLOYMENT AGENCY RULES**

REPEALS

Rule 0800-3-11-.01 General Definitions is repealed.

Rule 0800-3-11-.02 Required Board Meeting is repealed.

Rule 0800-3-11-.03 Special Meetings is repealed.

Rule 0800-3-11-.04 Notice of Meetings is repealed.

Rule 0800-3-11-.05 Quorum is repealed.

Rule 0800-3-11-.06 Election of Officers is repealed.

Rule 0800-3-11-.07 Duties of Officers is repealed.

Rule 0800-3-11-.08 Order of Meetings is repealed.

Rule 0800-3-11-.09 Pleadings is repealed.

Rule 0800-3-11-.10 Application for Licenses is repealed.

Rule 0800-3-11-.11 Examination Dates is repealed.

Rule 0800-3-11-.12 Temporary Nonrenewable Licenses for Counselors is repealed.

Rule 0800-3-11-.13 Temporary Nonrenewable Emergency Licenses for Managers is repealed.

Rule 0800-3-11-.14 Transfer of an Employment Agency License is repealed.

Rule 0800-3-11-.15 Renewal of Private Employment Agency Manager and Counselor Licenses is repealed.

Authority: T.C.A. §4-3-1411 and Acts 1984, ch.865, § 24.

The proposed rules set out herein were properly filed in the Department of State on the 17th day of September, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2004. (09-19)

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

The Department of Mental Health and Developmental Disabilities, pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing, proposes to repeal Rules 0940-5-1-.02, 0940-5-1-.04, and 0940-5-3-.01 through 0940-5-3-.07. It is the intent of the Department to repeal 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 Department's Office of Legal Counsel, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, and in the Department of State, Publications Division, Eighth Floor, Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee, 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.

The purpose of these changes is to continue the process of removing from the rules of the Department of Mental Health and Developmental Disabilities, references to alcohol and drug abuse services, which have been transferred to the Department of Health.

The rules to be repealed are:

0940-5-1-.02, Definition of Terms Used in Alcohol and Drug Abuse Rules

0940-5-1-.05, Definition of Distinct Categories of Alcohol and Drug Abuse Facilities.

0940-5-3-.01, Application of Rules for Alcohol and Drug Abuse Non-Residential Treatment Facilities

0940-5-3-.02, Application of Rules for Alcohol and Drug Abuse Non-Residential Methadone Treatment Facilities

0940-5-3-.03, Application of Rules for Alcohol and Drug Abuse Residential Detoxification Treatment Facilities

0940-5-3-.04, Application of Rules for Alcohol and Drug Abuse Residential Rehabilitation Treatment Facilities

0940-5-3-.05, Application of Rules for Alcohol and Drug Abuse Halfway House Treatment Facilities

0940-5-3-.06, Application of Rules for Alcohol and Drug Abuse Early Intervention Facilities

0940-5-3-.07, Application of Rules for Alcohol and Drug Abuse DUI School Facilities

The proposed repeal of rules set out herein was properly filed in the Department of State on the 4th day of September, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2004. (09-08)

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PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT (SEE T.A.R. CITED)

- 0640 - Department of Finance and administration - Bureau of TennCare - Public Necessity rules due process rights of persons currently eligible and potentially eligible for medical assistance through the TennCare Standard program, chapter 1200-13-15 Rules of the TennCare Administrative Hearings and Officials, 8 T.A.R. (August 15, 2003) - Filed July 14, 2003; effective through December 26, 2003. (07-12)

- 1200 - Department of Health - Bureau of Health services - Public necessity rules relating to Conrad J-1 Visa Waiver physicians, chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program, 9 T.A.R. (September 2003) - Filed August 13, 2003; effective through January 25, 2004. (08-10)

- 1240 - Department of Human Services - Child Support Division - Public Necessity rules dealing with calculation of child support, chapter 1240-2-4 Child Support Guidelines IV -D, 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-01)

- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-1 Standards for Group Care Homes - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-04)

- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-05)

- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-4 Standards for Family Child Care Homes - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-06)

- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-07)

- 1240 - Department of Human Services - Family Assistance Division - Public Necessity rules requiring standard of need to be set by July 1, chapter 1240-1-50 Standard of Need/Income - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-03)

- 1500 - The Tennessee Human Rights Commission - Public necessity rules regarding discrimination complaints, chapter 1500-1 Rules for Acting on Complaints of Discrimination, 7 T.A.R. (July 15, 2003) - Filed June 18, 2003; effective through November 30, 2003. (06-20)

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RULEMAKING HEARINGS

THE TENNESSEE COMMISSION ON AGING AND DISABILITY - 0030

The Tennessee Commission on Aging and Disability will hold a public hearing to receive comments concerning proposed rules for verifying background information of employees and volunteers who provide direct, in-home care for elderly individuals or adults with disabilities. The Commission will also receive comments on proposed rules regarding minimum requirements for case management service provided under the State-Wide Medicaid Waiver Home and Community Based Services Program for Elderly and Disabled Adults. This hearing will be conducted as prescribed by Uniform Administrative Procedures Act T.C.A. §4-5-201 et. seq., and will take place at Knowles Senior Citizens Center, 174 Raines Avenue, Nashville, TN at 1:30 p.m. CST on November 19, 2003.

Written comments will be considered if received by close of business November 21, 2003, at the office of the Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860. Written comments may be transmitted in person, by U.S. Postal Service, a commercial courier, e-mail or facsimile. Any form of written comment must be identifiable by the sender's name and address, including zip code. Facsimile submissions will be accepted at 615-741-3309. Electronic mail submissions can be made to tnaging@state.tn.us.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Commission on Aging and Disability to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, facsimile, e-mail or other means, and should be made no less than ten days prior to November 19, 2003 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Commission on Aging and Disability, ADA Coordinator, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860, 615-741-2056. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298) or call the Commission on Aging and Disability TDD number, 615-532-3893.

For complete copies of the text of the notice, please contact Nancy Brode, Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860, telephone 615-741-2056, FAX 615-741-3309 or e-mail tnaging@state.tn.us.

SUBSTANCE OF PROPOSED RULES

RULES OF TENNESSEE COMMISSION ON AGING AND DISABILITY

CHAPTER 0030-1-6 REQUIREMENT TO VERIFY BACKGROUND INFORMATION FOR NEW EMPLOYEES AND VOLUNTEERS

0030-1-6-.01 PURPOSE. The Commission on Aging and Disability requires all contractors, grantees, subcontractors and service providers to verify individual background information for newly-hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of disabled or elderly persons in their homes. [T.C.A. 71-2-111]

0030-1-6-.02 CRIMINAL HISTORY BACKGROUND CHECKS. If the employing agency requests a criminal history background check to be conducted by the Tennessee Bureau of Investigation (TBI) or the Federal Bureau of Investigation (FBI), the process must be initiated by the submission of fingerprint cards to the investigating agency. Any cost incurred by the TBI or the FBI shall be paid by the organization requesting the investigation and information. If a criminal history background check is conducted by the TBI or the FBI, the payment of all costs associated with the investigation shall be made in the amounts established by T.C.A. 38-6-103.

0030-1-6-.03 MINIMUM REQUIREMENTS. The following requirements shall be considered minimum requirements. Any provider agency subject to this part shall have the option to make more intensive background checks provided that the agency has established in writing the criteria and process for such checks.

0030-1-6-.04 REPORTING PRIOR CONVICTIONS. A service provider agency shall require all applicants for pay or volunteer employment to list any prior conviction by any local, state, federal or military court of any felony or any other conviction involving sexual crimes, crimes against a person, fraud involving financial exploitation and/or substance abuse in a format prescribed by the Commission on Aging and Disability.

0030-1-6-.05 CHECKING EMPLOYMENT AND PERSONAL REFERENCES. The service provider agency shall check past work and personal references prior to employment of applicants.

- (1) At a minimum the organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years.
- (2) The organization shall communicate directly with at least two (2) of the personal references identified by the applicant.
- (3) Within or prior to ten (10) days of employment, or volunteer affiliation, of such person, employing organizations shall begin the process of verifying background information as required by this subsection.

0030-1-6-.06 REQUIREMENTS FOR EMPLOYEES OR VOLUNTEERS. As a condition of employment with a provider agency, any person who applies to work for the agency as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons receiving home and community based services, if so requested by the employing agency, shall:

- (1) Agree to the release of all investigative records from any source, including federal, state and local governments to the hiring organization for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization;
- (2) Supply fingerprint samples for the purpose of submitting for a criminal background investigation by the Tennessee Bureau of Investigation. If no disqualifying record is identified, the TBI shall, if so requested, send the fingerprints to the FBI for a national criminal history record check;

- (3) Release information for a criminal background investigation by a state licensed private investigation company;
- (4) Provide past work history containing a continuous description of activities over the past five (5) years; and/or
- (5) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years.

0030-1-6-.07. Requirements for Employers. Each provider agency must document in its personnel files for each employee or volunteer subject to this part:

- (1) The applicant's statement of any prior convictions;
- (2) The results of its check of personal and/or employment references;
- (3) The results of a county criminal history check for each of the last two counties in which the applicant lived or worked, if such a check is performed;
- (4) The results of the check of all Tennessee Department of Health databases of licensed health professionals including Certified Nursing Assistants (CNA);
- (5) The results of any other checks which may have been requested by the provider agency, including background checks by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation; and,
- (6) Justification/explanation of the decision to employ an individual if the background check identified negative information.

Authority: T.C.A. §§ 4-5-201, 71-2-105(b)(1), and 71-5-111(b).

SUBSTANCE OF PROPOSED RULES

CHAPTER 0030-2-2

STATE-WIDE MEDICAID HOME AND COMMUNITY BASED SERVICES WAIVER FOR ELDERLY AND DISABLED ADULTS

0030-2-2 .01 PURPOSE. The purpose of this rule is to implement the Medicaid waiver long-term care home and community based services program authorized by T.C.A. Section 71-5-1408 which is intended to serve low-income nursing home eligible individuals in HCBS settings who have been pre-admission evaluation (PAE) approved by the Bureau of TennCare and certified eligible for Medicaid services by the Department of Human Services.

0030-2-2-.02 MINIMUM REQUIREMENTS (PRINCIPLES) FOR CASE MANAGEMENT SERVICES.

- (1) Case management services offered under the long-term care services plan authorized at T.C.A. 71-5-1408 shall meet the principles of the Older Americans Act [42 U.S.C. 3026(a)(8)] to include the following:
 - (a) Case management must be provided by a public agency or a nonprofit private agency. [42 U.S.C. 3026 (a)(8)(C)]

- (b) The case manager must provide each individual seeking services under the waiver a comprehensive list of agencies that are authorized to provide services within the jurisdiction of the area agency on aging and disability. [42 U.S.C. 3026 (a)(8)(C)(i)]
- (c) The case manager must provide each individual enrolled in the waiver a statement specifying that the individual has a right to make an independent choice of service providers and document the receipt by each enrollee of such statement. [42 U.S.C. 3026 (a)(8)(C)(ii)]
- (2) Case managers shall be required to act as exclusive agents for individual enrollees receiving waiver services and must not promote any agency providing such services. [42 U.S.C.A. 3026 (a)(8)(C)(iii)]
- (3) The agency providing case management services shall not provide any other services to the individual receiving case management. [T.C.A. 71-5-1402 (e)(10)]
- (4) Case managers should seek to maximize the use of voluntary and existing services for waiver enrollees. [T.C.A. 71-5-1402 (e)(11)]

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-42)

BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-15-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 10th day of December, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0460-1-.01, Definitions, is amended by deleting paragraphs (10) and (11), which are the definitions for Oral and Maxillofacial Surgery and for Oral Pathology, in their entirety and substituting instead the following language, and is further amended by deleting paragraph (17), which is the definition for “Registered Dental Assistants,” in its entirety and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs (10) and (11), which are the definitions for Oral and Maxillofacial Surgery and for Oral and Maxillofacial Pathology, shall read:

- (10) Oral and Maxillofacial Surgery - That specialty branch of dentistry which includes the treatment of the oral cavity and maxillofacial area or adjacent or associated structures and their impact on the human body that includes the performance of the following areas of Oral and Maxillofacial Surgery, as described in the most recent version of the Parameters and Pathways: Clinical Practice Guidelines for Oral and Maxillofacial Surgery of the American Association of Oral and Maxillofacial Surgeons:
- (a) Patient assessment;
 - (b) Anesthesia in outpatient facilities, as provided in T.C.A. §§ 63-5-105 (6) and 63-5-108 (g);
 - (c) Dentoalveolar surgery;
 - (d) Oral and craniomaxillofacial implant surgery;
 - (e) Surgical correction of maxillofacial skeletal deformities;
 - (f) Cleft and craniofacial surgery;
 - (g) Trauma surgery;
 - (h) Temporomandibular joint surgery;
 - (i) Diagnosis and management of pathologic conditions;
 - (j) Reconstructive surgery including the harvesting of extra oral/distal tissues for grafting to the oral and maxillofacial region; and
 - (k) Cosmetic maxillofacial surgery.
- (11) Oral and Maxillofacial Pathology - That specialty branch of dentistry which deals with the nature of the diseases affecting the oral cavity and maxillofacial area or adjacent or associated structures, through study of its causes, its processes and its effects, together with the associated alternations of oral structure and function. The practice of oral and maxillofacial pathology shall include development and application of this knowledge through the use of clinical, microscopic, radiographic, biochemical or other such laboratory examinations or procedures as may be required to establish a diagnosis and/or gain other information necessary to maintain the health of the patient, or to correct the result of structural or functional changes produced by alternations from the normal.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-112, 63-5-115, and Public Chapter 237 of the Public Acts of 2003.

Rule 0460-1-.02, Fees, is amended by deleting subparagraphs (1) (a), (1) (b), (1) (c), (1) (d), (1) (g), (1) (i), (1) (j), (1) (k), (2) (a), (2) (e), (3) (a), and (3) (c) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (1) (b), (1) (c), (1) (d), (1) (g), (1) (i), (1) (j), (1) (k), (2) (a), (2) (e), (3) (a), and (3) (c) shall read:

- | | | |
|---------|---|-----------|
| (1) (a) | Licensure Application Fee – Payable each time an application for licensure is filed. This fee also applies to limited, educational limited, dual degree and criteria (reciprocity) licensure applicants. | \$ 400.00 |
| (1) (b) | Limited and Educational Limited Licensure Fee – Payable each time an application for a limited or an educational limited license is filed. This fee is to be paid in addition to the licensure application fee. | \$ 150.00 |
| (1) (c) | Specialty Certification Application Fee – Payable each time an application for a specialty certification is filed. | \$ 150.00 |
| (1) (d) | Specialty Certification Examination Fee – A non-refundable fee to be paid each time a specialty exam is taken. | \$ 150.00 |
| (1) (g) | Licensure Renewal Fee – Payable biennially by all licensees, including educational and dual degree licensees, and excluding Inactive Volunteer licensees. | \$ 300.00 |
| (1) (i) | Reinstatement Fee – Payable when a licensee fails to renew licensure timely and which is paid in addition to all current and past due licensure renewal fees. | \$ 750.00 |
| (1) (j) | Duplicate License Fee – Payable when a licensee requests a replacement for a lost or destroyed “artistically designed” wall license or renewal certificate. | \$ 30.00 |
| (1) (k) | Inactive Volunteer Renewal Fee – This fee is paid biennially by Inactive Volunteer licensees. | \$ 45.00 |
| (2) (a) | Licensure Application Fee – Payable each time an application for licensure is filed. This fee also applies to criteria approval and educational licensure applications. | \$ 115.00 |
| (2) (e) | Licensure Renewal Fee – Payable biennially by all licensees, including criteria approved and educational licensees. | \$ 190.00 |
| (3) (a) | Registration Application Fee – Payable each time an application for a registration to practice as a dental assistant is filed. | \$ 30.00 |
| (3) (c) | Registration Renewal Fee – Payable biennially by all registrants. | \$135.00 |

Authority: T.C.A. § 4-5-202, 4-5-204, 63-5-105, 63-5-110, 63-5-113, and 63-5-117.

Rule 0460-1-.06, Disciplinary Actions, Civil Penalties, Procedures, Declaratory Orders, Assessment of Costs, and Subpoenas, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-5-124.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-144, 63-5-105, 63-5-124, 63-5-125, 63-5-128, and Public Chapter 102 of the Public Acts of 2003.

Rule 0460-2-.06, Specialty Certification, is amended by deleting subparagraph (1) (d) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (7) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (7) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (d), the new paragraph (7) but not its subparagraphs, and the new subparagraph (7) (a) shall read:

- (1) (d) Oral and Maxillofacial Pathology;
- (7) Oral and Maxillofacial Pathology
 - (a) Required Documentation - An applicant must submit certification of successful completion of two (2) years of postgraduate training in Oral Pathology or Oral and Maxillofacial Pathology at the university level in a program approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-112, 63-5-113, and Public Chapter 237 of the Public Acts of 2003.

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd of September, 2003. (09-23)

THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF AIR POLLUTION CONTROL

There will be a public hearing before the technical secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations under the authority of Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be distributed to the members of the Tennessee Air Pollution Control Board for their review in regards to the proposed amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 159 Fourth Avenue North, Nashville, Tennessee, at 9:30 a.m. on Tuesday, Nov. 18, 2003. Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of these comments to be submitted to the hearing officer at the public hearing.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Tuesday, Nov. 18, 2003, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to November 18, 2003 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Mr. Jeryl Stewart at (615) 532-0554. Copies of documents concerning this matter are available for review at the office of the technical secretary and at certain public depositories. For information about reviewing these documents, please contact Mr. Jeryl Stewart, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0554.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-3-5 VISIBLE EMISSION REGULATIONS

AMENDMENT

Chapter 1200-3-5 VISIBLE EMISSION REGULATIONS is amended by substituting for the present chapter a new chapter so that, as amended, the chapter shall read:

TABLE OF CONTENTS

1200-3-5-.01	General Standards	1200-3-5-.08	Titanium Dioxide (TiO ₂)Manufacturing
1200-3-5-.02	Allowances During Startup, Shutdown and Malfunction	1200-3-5-.09	Kraft Mill and Soda Mill Recovery Furnaces
1200-3-5-.03	Method of Evaluation and Recording	1200-3-5-.10	Choice of Visible Emission Standard for certain Fuel Burning Equipment
1200-3-5-.04	Exemption	1200-3-5-.11	Repealed
1200-3-5-.05	Petition for Certificate of Validation	1200-3-5-.12	Repealed
1200-3-5-.06	Wood-Fired Fuel Burning Equipment	1200-3-5-.13	Existing Fuel Burning Installations With Large Fuel Burning Equipment
1200-3-5-.07	Reserved		

1200-3-5-.01 GENERAL STANDARDS.

- (1) No person shall cause, suffer, allow or permit discharge of a visible emission from any air contaminant source with an opacity in excess of twenty (20) percent as set forth in Paragraph 1200-3-5-.03 (6). This visible emission limit shall apply unless a specific visible emission standard is set in a subsequent paragraph of this rule or subsequent rule of this Division 1200-3
- (2) Regardless of the visible emission standard contained in this chapter, all sources identified in Chapter 1200-3-19 of these regulations shall comply with the visible emission standards contained therein.
- (3) Upon mutual agreement of any air contaminant source and the Technical Secretary, an emission limit more restrictive than that otherwise specified in this Chapter may be established. This emission limit shall be stated as a special condition for any permit or order issued concerning the source.
- (4) Regardless of the visible emissions standard contained in this chapter, all sources identified in Rule 1200-3-9-.01(4) of these regulations shall comply with the visible emission standards set pursuant to Rule 1200-3-9.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.02 ALLOWANCES DURING STARTUP, SHUTDOWN, AND MALFUNCTION.

- (1) Consistent with the requirements of Chapter 1200-3-20, due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions and malfunctions.
- (2) A source required to install an opacity monitor meeting the criteria contained in rule 1200-3-10-.02 to determine compliance with the visible emission standards contained in the rules of this chapter may petition the Technical Secretary for source specific startup and shutdown exemption periods. Upon granting of such a petition, the source specific startup and shutdown conditions shall be incorporated into the source's permit.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.03 METHODS OF EVALUATION, DATA REDUCTION AND RECORDING.

- (1) A determination of visible emissions shall be made by a certified evaluator and compliance with the standards contained in rules of this chapter shall be evaluated in terms of opacity.
- (2) Evaluators shall be certified by the criteria approved by the Board.
- (3) Visible emission readings by certified evaluators shall be performed by methods approved by the Board.
- (4) Obscuration of vision due to uncombined water droplets shall not be considered a violation of the standards in this chapter.
- (5) A source required to use an opacity monitor meeting the criteria contained in rule 1200-3-10-.02 to determine compliance with the visible emission standards contained in the rules of this chapter shall meet the operational availability and quality assurance requirements specified as permit conditions. Data from a properly certified opacity monitor shall take precedence over visible emission evaluations conducted by a certified evaluator.
- (6) General visible emission standards
 - (a) For sources that have had no construction permit issued on or after July 7, 1992
 1. No person shall cause, suffer, allow or permit discharge of a visible emission from any air contaminant source with an opacity in excess of twenty (20) percent for an aggregate of more than five (5) minutes in any one (1) hour or more than twenty (20) minutes in any twenty-four (24) hour period.
 2. Visible emissions data reduction shall be accomplished utilizing the procedures set forth in Tennessee Visible Emission Evaluation Method 2, as adopted by the Tennessee Air Pollution Control Board on August 24, 1984.
 - (b) For sources that have had a construction permit issued on or after July 7, 1992

1. - No person shall cause, suffer, allow, or permit the discharge of a visible emission from any air contaminant source in excess of twenty (20) percent opacity (6 minute average) except for one six minute period per one (1) hour or more than twenty-four (24) minutes in any twenty-four (24) hour period.
2. Visible emissions data reduction shall be accomplished utilizing the procedures set forth in 40 CFR 60, Appendix A, Method 9.
- (7) Visible emissions from roads and parking areas shall be determined and data reduced utilizing the procedures set forth in Tennessee Visible Emission Evaluation Method One (1) as adopted by the Tennessee Air Pollution Control Board on April 29, 1982 and as amended on September 15, 1982 and as amended on August 24, 1984. Use of this methodology is not applicable unless its use is specified on a permit issued pursuant to 1200-3-9 and that permit sets forth an applicable emission limit.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq. Administrative History: Original rules filed January 10, 1977; effective February 9, 1977. Amendment filed September 21, 1988; effective November 6, 1988. Amendment filed April 23, 1992; effective June 7, 1992.

1200-3-5-.04 EXEMPTION.

- (1) Visible emissions from fuel-burning equipment used exclusively to provide space heating in a building containing not more than two (2) dwelling units shall not be subject to the provisions of this chapter.
- (2) Unless the visible emission standard was set under the authority of 1200-3-5-.01(2), (3), or (4), the visible emission standards of this chapter shall not apply where a source has an applicable visible emissions standard under Sections 111 or 112 of the Federal Clean Air Act..
- (3) If the installation of an in-stack opacity monitor is required by a standard set under the authority of Sections 111 or 112 of the Federal Clean Air Act , then for an identical existing source to obtain the less restrictive opacity standard set under the authority of Sections 111 or 112 of the Federal Clean Air Act the installation of an in-stack opacity monitor meeting the specifications contained in rule 1200-3-10-.02(1)(d)1 shall be required. For situations where the installation of an in-stack opacity monitor would be required to obtain an opacity standard for an existing source equivalent to that set forth for an identical new source subject to a standard set under the authority of Sections 111 or 112 of the Federal Clean Air Act , it is the responsibility of the source owner or operator to notify the Technical Secretary in writing that this revision to the source's existing opacity standard is requested and that the required in-stack opacity monitor will be installed in accordance with rule 1200-3-10-.02.
- (4) The standards in this chapter shall not apply to fog obscurant screens generated for training purposes by the United States military on military bases. Provided that:
 - (a) No hazardous air pollutants, as defined in Paragraph 1200-3-31-.02 (6) of these Regulations. Shall be used for the generation of the fog obscurant screens.
 - (b) The fog obscurant screens shall comply with the provisions of Chapter 1200-3-8 and Paragraph 1200-3-9-.03 (3) of these Regulations.
- (5) If a source owner or operator can demonstrate that condensed water is present in the exhaust flue gas stream and would impede the accuracy of opacity measurements, then the owner or operator of an affected unit equipped with a wet flue gas pollution control system is exempt from the opacity monitoring requirements of Chapter 1200-3-5 or Chapter 1200-3-10.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.05 PETITION FOR CERTIFICATE OF VALIDATION.

- (1) Air contaminant sources meeting the conditions in paragraphs (2) and (3) of this rule and for which a certificate of validation has been issued by the Technical Secretary indicating that to his satisfaction the conditions in paragraph (2) are met, must in lieu of meeting the requirements of rule .01 of this chapter, meet the following emission standards of no visible emissions in excess of forty (40) percent opacity for an aggregate of more than five (5) minutes in any one (1) hour or more than twenty (20) minutes in any one twenty-four (24) hour period. Visible emissions data reduction shall be accomplished utilizing the procedures set forth in Tennessee Visible Emission Evaluation Method 2, as adopted by the Tennessee Air Pollution Control Board on August 24, 1984.
- (2) The Technical Secretary must issue a certificate of validation if applied for and the owner or operator of the air contaminant source demonstrates to the satisfaction of the Technical Secretary the following conditions exist:
 - (a) The air contaminant source shall be subject to the rules contained in either Chapter 1200-3-6 or Chapter 1200-3-7 and shall be meeting the appropriate emission standard contained in those chapters.
 - (b) This rule shall not apply to sources whose visible emissions are regulated by a standard set under the authority of Sections 111 or 112 of the Federal Clean Air Act or sources whose visible emissions are regulated by Paragraph 1200-3-9-.01(4).
 - (c) The air contaminant source does not include a gas or oil-fired boiler. However, if the particulate emissions of the fuel burning installation are less than that which rule 1200-3-6-.02 would allow for a fuel burning installation of the size Q_s where Q_s is the heat input rate from solid fuels and/or liquid fuels other than oil, then the previous sentence will not prohibit, in and of itself, the issuance of a certificate of validation.
 - (d) Each emission point, suitable for the installation of a continuously recording opacity monitor of the air contaminant source, whether a process emission source, fuel burning installation, incinerator, or wigwam, having a flow rate of 100,000 ACFM or more shall be equipped with continuously recording opacity monitors of the reference method type as outlined in 40 CFR 60, Appendix B, Performance Specification 1. However, a monitor will not have to be installed on those emission points of the air contaminant source for which the owner or operator does not wish to be allowed to emit more than twenty percent opacity. In this event these points must be clearly specified on any application for a certificate of validation. The Technical Secretary may still require these other points to install such a monitoring system. This provision shall not apply to gas streams containing moisture which interferes with proper instrument operation
 - (e) The air contaminant source meets all emission standards in these regulations outside this chapter. Demonstration of this will require, as a minimum, an acceptable stack test report for particulate matter. This test must be conducted in the presence of personnel from the Division of Air Pollution Control.
 - (f) The PM_{10} ambient air quality standards are being met in the vicinity of the air contaminant source. The Technical Secretary may require this to be demonstrated.

- (g) A certificate of validation has never been revoked for this air contaminant source.
 - (h) A fee of five hundred dollars (\$500.00) has been paid to the Department to cover the costs of review of the request for the certificate of validation.
- (3) The owner or operator of the air contaminant source must:
- (a) post on the operating premises the certificate of validation;
 - (b) maintain for at least one year the readout from the opacity monitor(s) and keep this record available for inspection by the personnel of the Division of Air Pollution Control;
 - (c) Keep the air pollution control equipment and the opacity monitor in good operating condition and utilize said equipment at all times.
- (4) After Administrative Hearing the certificate of validation will be revoked by the Technical Secretary if he finds any of the requirements of paragraph (2) have been violated and/or if the requirements of paragraph (3) have been frequently and flagrantly violated after its issuance.
- (5) Upon the granting of a construction permit for the modification of an air contaminant source for which a certificate of validation has been issued, the certificate of validation shall become void.
- (6) Sources utilizing the aggregate method of visible emissions data reduction may elect to have visible emissions data reduction accomplished utilizing the procedures set forth in 40 CFR 60, Appendix A, Method 9. For a source electing to have visible emissions determined by this method, the applicable visible emission standard under the certificate of validation shall be as follows: No visible emissions in excess of forty (40) percent opacity for more than one-six (6) minute period in any one (1) hour or more than twenty-four (24) minutes in any one twenty-four (24) hour period. For an affected source the choice of methods of the determination of visible emissions must be made with the application for the certificate of validation, otherwise the standard set forth in paragraph (1) of rule 1200-3-5-.05 shall apply.
- (7) Upon mutual agreement of any air contaminant source and the Technical Secretary, an emission limit more restrictive than those otherwise specified in this Paragraphs (1) and (6) of this Rule may be established. This emission limit shall be stated as a special condition for any permit or order issued concerning the source.
- (8) No air contaminant sources required to conduct in-stack opacity monitoring as per subparagraph (2)(d) above shall cause, suffer, allow, or permit discharge of a visible emission with an opacity in excess of forty (40) percent (6-minute average) except for not more than two percent of the time during a calendar quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) and not more than twenty-four (24) six minute time periods per day (midnight to midnight excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) if the source was originally subject to rule 1200-3-5-.13. No air contaminant sources required to conduct in-stack opacity monitoring as per subparagraph (2)(d) above shall cause, suffer, allow, or permit discharge of a visible emission with an opacity in excess of forty (40) percent (6-minute average) except for not more than one percent of the time during a calendar quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) and not more than twenty-four (24) six minute time periods per day (midnight to midnight excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) if the source was originally subject to any rule in chapter 1200-3-5 except rule 1200-3-5-.13.

- (9) Compliance with the visible emission standard set forth pursuant to Rule 1200-3-5-.05 (8) shall be determined from the data generated by the in-stack opacity monitoring system installed pursuant to Subparagraph 1200-3-5.05(2)(d).

Authority: T.C.A. §§-25-105 and 4-5-201 et. seq.

1200-3-5-.06 WOOD-FIRED FUEL BURNING EQUIPMENT.

- (1) Wood-fired fuel burning equipment, which commenced operation before March 1, 1978, with a heat input of 100 million Btu/hr or greater must meet an emission limit of forty (40) percent opacity except for four six (6) minute periods per day not to exceed one six (6) minute period per hour.
- (2) Wood-fired fuel burning equipment, subject to Rule 1200-3-6-.05(1), (a), (c), (d), (e), or (2) must meet an emission limit of twenty (20) percent opacity except for one six (6) minute period per hour.
- (3) Wood-fired fuel burning equipment subject to Rule 1200-3-6-.05(8)(d) must meet an emission limit of forty (40) percent opacity except for one six (6) minute period per hour.
- (4) For purposes of this rule opacity data reduction shall be accomplished utilizing the procedures outlined in 40 CFR 60, Appendix A, Method 9.
- (5) Other emission sources constructed on or after June 16, 1978, that exhaust through the same stack as wood-fired fuel burning equipment subject to Rule 1200-3-5-.06 shall meet an opacity standard where V is:

$$V = \frac{40.0 V_w + (x) V_R}{V_w + V_R}$$

Where,

- V = opacity standard in percent opacity, six (6) minute average.
- X = opacity standard in percent opacity that applies to other sources or sources discharging through same stack.
- V_w = exhaust flow rate in dry standard cubic feet per minute from the wood-fired fuel burning equipment and other equipment present before June 16, 1978.
- V_R = exhaust flow rate in dry standard cubic feet per minute from the equipment (not being wood-fired fuel burning equipment) constructed so as to exhaust through the stack and commenced on or after June 16, 1978.
- (6) This rule does not apply in Davidson, Hamilton, Knox, and Shelby Counties but facilities in these counties will be subject to Rule 1200-3-5-.01.
- (7) No sources utilizing continuous in-stack monitoring pursuant to Paragraph 1200-3-6-.05(4) shall cause, suffer, allow, or permit discharge of a visible emission with an opacity in excess of twenty (20) percent (6-minute average) except for not more than one percent of the time during a calendar quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) and not more than twenty-four (24) six minute time periods per day (midnight to midnight excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating)

- (8) Compliance with the visible emission standard set forth pursuant to Rule 1200-3-5-.06 (7) shall be determined from the data generated by the in-stack opacity monitoring system installed pursuant to Sub-part 1200-3-6-.05(4).

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.07 REPEALED.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. Seq.

1200-3-5-.08 TITANIUM DIOXIDE (TiO₂) MANUFACTURING.

- (1) Visible emissions from the spray dryers used for pigment drying in the chloride process for the manufacture of (TiO₂) shall meet an emission limit of 80 percent opacity provided that the sources comply with the applicable particulate matter emission limits set forth in Chapter 1200-3-7.
- (2) For purposes of this rule opacity data reduction shall be accomplished utilizing the procedures outlined in 40 CFR 60, Appendix A, Method 9.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.09 KRAFT MILL AND SODA MILL RECOVERY FURNACES.

- (1) Visible emissions from kraft mill and soda mill recovery furnaces under construction or in operation prior to September 24, 1976, shall not exhibit 35 percent opacity or greater.
- (2) For purposes of this rule opacity data reduction shall be accomplished utilizing the procedures outlined in 40 CFR 60, Appendix A, Method 9.
- (3) No sources subject to this rule, shall cause, suffer, allow, or permit discharge of a visible emission from any source with an opacity of or in excess of thirty-five (35) percent (6-minute average) except for not more than six percent of the time during a calendar quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating)
- (4) Compliance with the visible emission standard set forth pursuant to Rule 1200-3-5-.09 (3) shall be determined from the data generated by the in-stack opacity monitoring system installed pursuant to Sub-part 1200-3-10-.02(1)(a).

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.10 CHOICE OF VISIBLE EMISSION STANDARDS FOR CERTAIN FUEL BURNING EQUIPMENT.

- (1) A fuel burning installation having fuel burning equipment with a heat input of between 50 million Btu/hr and 600 million Btu/hr, in operation or having a construction authorization, on July 31, 1981 and subject to rule 1200-3-5-.01 shall have the option of electing an alternate visible emission standard contained in

paragraph 1200-3-5-.10(2). The owner or operator of such fuel burning equipment electing to be regulated by the alternate standard shall make this election known in writing, by certified mail, to the Technical Secretary within 90 days of the effective date of this rule.

- (a) The election of the alternate standard will apply to all fuel burning equipment at the fuel burning installation.
 - (b) If the alternate standard is not elected, all fuel burning equipment at the fuel burning installation will remain subject to Rule 1200-3-5-.01.
- (2) No source electing the alternate visible emission standard shall cause, suffer, allow, or permit discharge of a visible emission with an opacity in excess of twenty (20) percent (6-minute average) except for not more than one percent of the time during a calendar quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) and not more than twenty-four (24) six minute time periods per day (midnight to midnight excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating)
 - (3) Compliance with the visible emission standard set forth pursuant to Rule 1200-3-5-.10 (2) shall be determined from the data generated by the in-stack opacity monitoring system installed pursuant to Sub-part 1200-3-10-.02(1)(b)(1)(i).
 - (4) For purposes of this rule opacity data reduction shall be accomplished utilizing the procedures outlined in 40 CFR 60, Appendix A, Method 9.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.11 REPEALED

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.12 REPEALED

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

1200-3-5-.13 EXISTING FUEL BURNING INSTALLATIONS WITH LARGE FUEL BURNING EQUIPMENT

- (1) For existing fuel burning installations with fuel burning equipment of input capacity greater than 600×10^6 Btu per hour, no affected source shall cause, suffer, allow, or permit discharge of a visible emission with an opacity in excess of twenty (20) percent (6-minute average) except for not more than two percent of the time during a calendar quarter (excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating) and not more than twenty-four (24) six minute time periods per day (midnight to midnight excluding periods of startup, shutdown, or malfunction and periods when the facility is not operating)
- (2) Compliance with the visible emission standard set forth pursuant to Rule 1200-3-5-.13 (1) shall be determined from the data generated by the in-stack opacity monitoring system installed pursuant to Sub-part 1200-3-10-.02(1)(b)(1)(i).

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq.

This notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-41)

**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), and 68-211-111(d)(1). 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	November 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 Human Resources Division, 401 Church Street, 12th Floor L & C Tower, Nashville, TN 37243, 1-866-253-5827. 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, November 21, 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/news/communications.php>".

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
 1100 Pickwick Road
 Savannah, TN 38372
 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

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 deleting part 8.

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 final closure after July 1 of any year shall pay a proportionate share of the fee based on the number of days the facility is permitted.

Part 1 of subparagraph (c) 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 subpart (v).

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), and 68-211-111(d)(1).

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of September, 2003. (09-28)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH LICENSURE AND REGULATION
DIVISION OF EMERGENCY MEDICAL SERVICES**

CHAPTER 1200-12-1

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A. §§ 68-140-504, 68-140-505, and 68-140-507. 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, Ground Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:00 a.m., Central Standard Time, on the 8th day of December, 2003.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical Services 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 plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the department's ADA coordinator at the Andrew Johnson Tower, 11th Floor, 710 James Robertson Parkway, Nashville, TN 37243-0675, 615-741-6350.

For a copy of the entire text of the notice of rulemaking, contact Joseph B. Phillips, Director, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Rule 1200-12-1-.03 Emergency Medical Services Equipment and Supplies is amended by deleting the language of the existing rule in its entirety and substituting instead the following language, so that as amended, the rule shall read:

1200-12-1-.03 EMERGENCY MEDICAL SERVICES EQUIPMENT AND SUPPLIES - Each provider shall maintain the required equipment for the level of service to provide appropriate emergency care and where applicable, patient care during transport, on each vehicle permitted.

- (1) Definitions - as used in this rule, the following terms and abbreviations shall have these meanings:
 - (a) (E) - "Essential device" shall mean any item critical for lifesaving patient care and which by its absence would jeopardize patient care.
 - (b) (M) - "Minimal equipment or devices" shall mean such equipment and supplies provided in sufficient amounts for patient care, but when missing may not result in serious harm to a patient.
 - (c) "Optional equipment or devices" shall mean any item of elective use, which shall be operational and sanitary.
 - (d) "Specifications" shall refer to the federal standards and performance requirements for equipment and devices recognized within the emergency medical services industry and adopted by the board, which include the following:
 1. Federal Specification for Ambulances, KKK-A-1822E, dated June 1, 2002, or its successor.
 2. Standard Specification for Minimum Performance Requirements for EMS Ground Vehicles, F 1230-89, American Society of Testing and Materials, November, 1989, or its successor.
 3. Federal Motor Vehicles Safety Standards cited under 49 CFR 571.
- (2) Safety devices shall be provided to include:
 - (a) Fire extinguishers (E) - Two (2) ABC dry chemical, multipurpose 5 lb. unit, in restraint brackets. One mounted in the driver/cab compartment or in a body compartment reachable from outside the vehicle. On ambulances an extinguisher shall be located in the patient compartment or in a cabinet within the patient compartment.
 - (b) Three (3) bi-directional reflective triangles (E) - approved per FMVSS 125, for any transport vehicle.
 - (c) Flashlights (M) - 4.5 volt or better, three cell or lantern type for scene use, one accessible to the driver and one provided for technician use. At least one flashlight shall be provided for a first responder unit.
- (3) Oxygen inhalation, ventilation, and airway management devices shall be supplied providing:

- (a) Resuscitation and airway devices including:
1. Adjuncts for ventilation: (If disposable or single use devices are furnished, a spare unit shall be supplied on all ambulances.)
 - (i) bag-valve device (E) - with a bag volume of at least 1600 milliliters with oxygen reservoir for adult use.
 - (ii) bag-valve device (E) - with a bag-volume of 450 milliliters with oxygen reservoir for pediatric use.
 - (iii) resuscitation masks (E) -in adult, pediatric (child) and infant sizes.
 - (iv) oropharyngeal airways (M) - in at least five different sizes.
 - (v) nasopharyngeal airways (M) - in at least five different sizes.
 - (vi) Combitube dual lumen or other board approved airway device (M).
 - (vii) end-tidal carbon dioxide (CO₂) Detectors, for adult and pediatric use.
 2. Oxygen delivery devices:
 - (i) An installed oxygen supply (E) - with a capacity of at least 2,000 liters of oxygen shall be supplied on all ambulances.
 - (I) Cylinders shall be restrained in an approved manner.
 - (II) Pressure regulator and flow meters shall comply with 3.12.1.1, Federal Specifications for Ambulances and automatically supply a line pressure of 50 psi.
 - (III) At least two distribution outlets and flow meters shall be operable in the compartment.
 - (ii) Portable oxygen (E) - shall be provided with at least 300 liter, or "D" size cylinders.
 - (I) The oxygen unit and spare cylinders shall be restrained in an approved manner.
 - (II) Pressure regulator and flow meter shall comply with 3.12.2, Federal Specifications for Ambulances.
 - (III) A full spare cylinder (M) - shall be provided except on first responder units.
 - (iii) Administration devices shall include at least two of each item: (E) for items, (M) for amounts.
 - (I) Oxygen supply tubing of at least 48 inches length.
 - (II) Oxygen Masks including, adult non-rebreathing high concentration, pediatric non-rebreathing high concentration, and an infant medium concentration.

- (III) Adult nasal cannula.
 - (IV) Humidifiers shall be optional, but when supplied shall be single patient use.
3. Endotracheal intubation devices shall be supplied on advanced life support units, to include: (E) for items, (M) for amounts.
- (i) Laryngoscope handles with operable batteries in adult and pediatric sizes, appropriate for use with (ii).
 - (ii) Laryngoscope blades in sizes:
 - (I) 0, straight,
 - (II) 1, straight,
 - (III) 2, straight,
 - (IV) 2, curved,
 - (V) 3, straight,
 - (VI) 3, curved
 - (VII) 4, straight
 - (VIII) 4, curved.
 - (iii) Endotracheal tubes, individually packaged in a sanitary sealed envelope or plastic package in:
 - (I) Uncuffed sizes in the pediatric range, one of each size 2.5 to 6.0mm. (2.5, 3.0, 3.5, 4.0, 4.5, 5.0, 5.5, 6.0 mm)
 - (II) Cuffed sizes in the adult range, one of each size 6.5 to 9.0mm. (6.5, 7.0, 7.5, 8.0, 8.5, 9.0, 9.5 mm)
 - (iv) Six packets of sterile surgical lubricant or equivalent.
 - (v) Stylets, adult and pediatric.
 - (vi) Syringe for cuff inflation, 10cc, with plain Luer tip.
 - (vii) Magill forceps in adult and pediatric sizes.
 - (viii) Esophageal detection device
- (b) Suction devices and supplies shall include the following items:
- 1. Installed suction (E) - with vacuum gauge, a control, and collection bottle as specified in 3.12.3, Federal Specification for Ambulances.

- (i) At least two sets of suction tubing, six feet in length shall be supplied. (E) for item, (M) for amount.
 - (ii) Suction tubing and adapters (E) - shall be provided for endotracheal aspiration of meconium allowing direct connection of suction to the endotracheal tube. (E)
 - 2. A portable suction aspirator (E) - shall be supplied as specified in 3.12.4, Federal Specification for Ambulances.
 - (i) A collection bottle (disposable preferred) of at 500 milliliters shall be provided.
 - (ii) At least two sets of suction tubing, two feet or more in length shall be provided. (E) for items, (M) for amount.
 - 3. Suction supplies (M) - shall include rigid and flexible tips.
 - (i) At least two rigid, Yankauer style tips shall be provided.
 - (ii) Two sets of suction catheters shall be provided by BLS transport and ALS units; each set to consist of size 6, 8, 10, 14 and 16 French catheters.
- (4) Diagnostic and assessment devices shall include:
- (a) Sphygmomanometer with inflation bulb and gauge with: (E)
 - 1. Adult blood pressure cuff (E) - on all units.
 - 2. Pediatric blood pressure cuff (M) - except on first responder units.
 - 3. Adult large or thigh blood pressure cuff (M) - except on first responder units.
 - (b) Stethoscope (E)
 - (c) Bandage shears (M)
 - (d) Items (b) and (c) may be carried as personally assigned equipment, provided the service has a posted policy regarding supply of these devices.
- (5) Bandages and dressing material shall include:
- (a) Two (2) rolls of surgical adhesive tape (M), at least one inch in width.
 - (b) Six (6) rolls of conforming gauze roller bandage (M), at least three inches in width.
 - (c) Six (6) triangular bandages (M) with a minimum base at least forty-two (42) inches.
 - (d) Twenty-five (25) sterile 4" by 4" dressings (M).
 - (e) Eight (8) composite pad sterile compresses, abdominal (ABD)/combine dressings (M).
 - (f) Two sterile occlusive dressings of white petrolatum coated gauze or plastic membrane film at least 3" by 3" (M).

- (g) Two burn sheets (M) separately packaged, sterile or clean, at least 60 by 60 inches.
 - (h) Saline solution or sterile water for irrigation (M), in plastic containers sufficient to supply 2000 milliliters on each transport vehicles.
- (6) Immobilization devices provided on all units except first responder units:
- (a) Two long spinal immobilization devices or backboards (E) whole body splints, or approved devices capable of immobilizing a patient with suspected spinal injuries.
 - 1. Straps or restraints which immobilize the patient at or about the chest, pelvis, and knees shall be provided.
 - 2. Wooden devices shall be sealed with finishes to prevent splintering and aid decontamination.
 - (b) One short spinal immobilization device consisting of a clam-shell, wrap around type vest. (E)
 - 1. Device shall provide spinal immobilization for the seated patient.
 - 2. Device shall include affixed restraint straps, head straps and integral padding.
 - 3. Device with straps and accessories shall be maintained in a separate case or carrier bag.
 - (c) Two cervical spinal immobilization devices or head immobilizers designed to prevent lateral head movement of the restrained patient. (M)
 - 1. Four disposable or plastic covered foam blocks with tape or restraint straps may be provided to fulfill this requirement.
 - 2. Commercial devices shall include accompanying straps or restraint materials.
 - 3. Sand bags shall not fulfill this requirement due to the potential for weight shifts of the fill material.
 - (d) Two sets of cervical collars (M) - shall be provided in the following sizes. (Combinations of adjustable-type collars are acceptable to provide at least two adult and two pediatric/infant collars):
 - 1. Pediatric - Infant sized cervical collars are highly recommended in addition to pediatric size ranges.
 - 2. Small adult.
 - 3. Medium adult.
 - 4. Large adult.
 - (e) Upper extremity splints (M) - shall include at least two devices or sets of fabricated splints for immobilization of arm injuries.
 - 1. Board splints, when provided, shall be padded and at least fifteen inches length.

2. Inflatable splints shall not fulfill this requirement.
 - (f) Lower extremity splints (M) - shall include at least two devices or sets of fabricated splints for immobilization of leg injuries.
 1. Board splints, when provided, shall be padded and at least thirty-six inches length.
 2. Inflatable splints shall not fulfill this requirement.
 - (g) One lower extremity traction splints (E) - shall be provided with necessary attachments to achieve immobilization of femoral fractures involving both lower extremities.
- (7) Immobilization devices on first responder units shall include one set of cervical collars, as identified in (6)(d) and at least one set of upper and lower extremity splints as identified in (6)(e) and (6)(f).
- (8) Patient care supplies shall include:
- (a) Containers for human waste and emesis with a bedpan, urinal, and emesis basin or suitable substitute on all patient transport vehicles. (M)
 1. Tissues shall be provided for secretions and toilet use.
 2. At least two emesis containers shall be provided.
 - (b) Blankets (M) - or protective patient covers with thermal insulating capabilities.
 1. Two blankets for adults
 2. One baby blanket and head covering (Cloth or non-woven fabric).
 - (c) Four sheets (M) - of linen or disposable material for cot and patient covers.
 - (d) An obstetrical emergencies pack or O.B. kit (E) - shall provide the following items, but shall not be required on first responder units:
 1. Drape towel or underpad,
 2. Gauze dressings,
 3. Sterile gloves,
 4. Bulb syringe or aspirator,
 5. Cord clamps and/or umbilical ties,
 6. Plastic bags and ties for placental tissues,
 7. Infant receiving blanket or swaddling materials, and
 8. A head covering shall be provided.
- (9) Infection control supplies shall include:

- (a) Appropriate personal protective equipment (M) - conforming to Occupational Safety and Health Administration rules including, but not limited to, the following:
 - 1. Disposable gloves sized for the crew,
 - 2. Fluid proof gowns or lab coats,
 - 3. Two face masks (NIOSH approved to at least N-95 standards)
 - 4. Eye shields or protective face shields, and
 - 5. Protective footwear or shoe covers.
 - (b) Materials for decontamination and disposal of potentially infected waste (M) - to include:
 - 1. Red plastic bags or trash bags labeled for biohazard, with at least two bags 24" by 30".
 - 2. A puncture resistant container shall be supplied for sharps disposal in a locking-style bracket or in a locked compartment within the ambulance. Sheath style or single use containers shall be disposed of in larger approved containers.
 - 3. Antiseptic hand cleaner and an Environmental Protection Administration approved hospital grade disinfectant for equipment application.
- (10) Intravenous therapy supplies shall be required on all ambulances as follows: (E) for items, (M) for amounts.
- (a) Fluid administration sets,
 - 1. Macrodrip, ten to twenty drops per milliliter, three (3) each.
 - 2. Microdrip, sixty drops per milliliter, three (3) each
 - (b) Antiseptic wipes twelve (12) each.
 - (c) Catheters, over-the-needle type, four (4) sets in each gauge size 14, 16,18,20,22 and 24.
 - (d) Three liters of intravenous solutions, two of which will be crystalloid fluids.
 - (e) Disposable (non-latex) venous tourniquets, sufficient for adult and pediatric use.
 - (f) Intraosseus infusion needles, a minimum of an 18 gauge size shall be required on ALS units.
- (11) Cardiac defibrillators and monitors shall be provided for use by appropriately trained personnel as follows:
- (a) Advanced life support units shall be equipped with a cardiac monitor, electrocardiographic recorder, and defibrillator. (E) A biphasic waveform shall be required on any cardiac/defibrillator purchased after the effective date of this rule.
 - 1. Cardiac monitoring leads (M) - shall be provided:

- (i) Six electrodes for adults.
 - (ii) Six electrodes for pediatrics.
 2. Defibrillators purchased which are manufactured and purchased following adoption of these rules shall be provide a minimum setting of ten (10) joules.
 - (b) An automated external defibrillator shall be provided on each staffed and permitted ambulance, except those otherwise staffed and equipped to provide advanced life support as identified in paragraph (a) .
 - (c) Automated external defibrillator shall be an optional device for first responder units.
- (12) Medications and required drugs for all ambulance and advanced life support providers shall include: (E) for items, (M) for amounts. Medications must be packaged and stored in accordance with pharmacologic guidelines for sterility, cleanliness, dosage, and expiration.
- (a) Medications for use by basic emergency medical services on all ambulances shall include:
 1. An anaphylaxis kit of Epinephrine 1:1,000 in a preloaded syringe of 0.3ml per dose, or a Tuberculin syringe with a minimum 5/8 inch, 25 gauge needle, with a sufficient quantity of Epinephrine 1:1,000 to administer two (2) doses to two patients.
 2. Aspirin for administration to suspected cardiac patients.
 3. Beta-adrenergic agonist (albuterol, etc.) with appropriate administration devices for acute pulmonary distress.
 4. Nitroglycerine, 1/150 grain (0.4 mg) bottle of thirty (30) tablets or sublingual spray.
 - (b) Medications for use in definitive and cardiac care shall be provided on advanced life support units. Medications used on advanced level ambulances shall be compatible with current standards as indicated by the American Heart Association's Emergency Cardiovascular Care Committee to include:
 1. Cardiovascular medications
 - (i) Adenosine, 6 mgm/2ml, sufficient to administer successive doses up to 18 milligrams.
 - (ii) Atropine sulfate, at least four (4) prefilled syringes of 1.0mg/10ml, or equivalent.
 - (iii) Antiarrhythmic agents to include sufficient amounts for two successive doses of either lidocaine for cardiac arrhythmia (at least four (4) prefilled syringes of 100 mg in 5 milliliters), or Amiodarone (in ampules of 150 to 300 mg to total at least 450 mg). Admixtures or premixed solutions shall be provided for a maintenance drip.
 - (iv) Magnesium sulfate, 1 gm sufficient to administer 2 gm in successive doses with dilution.
 - (v) Bacteriostatic water and sodium chloride for injection and dilution of medications.

2. Analgesics, such as morphine, meperidine hydrochloride, nalbuphine (Nubain), butophanol (Stadol), or Nitrous oxide.
 3. Benzodiazepine Anticonvulsant, diazepam (at least two (2) vials or prefilled syringes of ten (10 milligrams/2ml) or other benzodiazepine in equivalent amounts sufficient to administer two successive maximum doses)
 4. Vasopressor agents, such as Epinephrine 1:10,000 at least four (4) prefilled syringes of 1.0 mg/ml or equivalent therapeutic agent.
 5. Hypoglycemic countermeasures
 - (i) Glucose testing devices for semi-quantitative blood glucose determinations, with media, calibration strips, and lancets.
 - (ii) Dextrose 50% in water, at least two (2) prefilled syringes of 25 grams in 50 milliliters
 - (iii) Dextrose 25% in water, at least two (2) prefilled syringes of 12.5 grams in 50 milliliters
 6. Narcotic antagonist, Narcan (naloxone). At least two (2) ampules or prefilled syringes of 1mg/ml.
 7. Alkalinizing agents, sodium bicarbonate, at least two (2) syringes of 50 mEq in 50 milliliters.
 8. Systemic diuretics, furosemide, 10 mg/ml, ampules, vials, or prefilled syringes to total 80 milligrams
 9. Antinauseant, such as (promethazine), 25mg/ml, or therapeutic equivalent.
 10. Antihistamine, diphenhydramine, 50 mg, or therapeutic equivalent.
- (c) Syringes for drug administration shall be supplied in at least 1 cc, 3 cc, and 10 cc sizes with needles.
- (d) A length-based drug dosage tape for pediatric resuscitation shall be supplied. (2002 BroselowTM or successor edition.)
- (13) Air ambulances shall provide equipment as required in Rule 1200-12-1-.05.
- (14) Equipment requirements as detailed in (3) to (12) shall not apply to vehicles used solely for neonatal critical care transport. Neonatal transport equipment and supplies shall conform to the standards adopted in the Tennessee Perinatal Care System Guidelines for Transportation, Tennessee Department of Health, Maternal and Child Health Section, September, 2001, or the successor publication.
- (15) Inspections of equipment and supplies reflecting deficiencies in essential (E) items or multiple deficiencies of minimum (M) items shall be grounds for failure of inspection. Five or fewer deficiencies or shortage of supplies termed minimal (M) shall receive a warning. Conditional acceptance during inspection may be recognized by the Division's representative when good faith efforts are demonstrated by the provider to acquire or repair minimal equipment, subject to a recheck of any conditional device within forty-five (45) days of the initial inspection.

- (17) Equipment cited for Emergency Medical First Responder vehicles shall be in addition to minimal supplies cited in Rule 1200-12-1-.16.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-140-504, 68-140-505, and 68-140-507.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-37)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH LICENSURE AND REGULATION
DIVISION OF EMERGENCY MEDICAL SERVICES**

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A. §§68-140-504, 68-140-508, 68-140-509, 68-140-517, and 68-140-518. 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, Ground Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:00 a.m., Central Standard Time, on the 5th day of December, 2003.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical Services 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 plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the department's ADA coordinator at the Andrew Johnson Tower, 11th Floor, 710 James Robertson Parkway, Nashville, TN 37243-0675, 615-741-6350.

For a copy of the entire text of the notice of rulemaking, contact Joseph B. Phillips, Director, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-12-1

AMENDMENTS

Rule 1200-12-1-.04 Emergency Medical Technician, subparagraph (1)(f) Emergency Medical Technician Licensure Requirements is amended by deleting the subparagraph in its entirety and replacing it with the following language, so that as amended, the new subparagraph shall read:

- (f) Must successfully complete an approved basic Emergency Medical Technician course including all examinations within two (2) years of completion of training.

1. Written Examination
 - (i) Achieve a passing score on any EMS Board-approved examination.
 - (ii) Applicants who fail to pass the examination shall be eligible to reapply for examination.
2. Practical Examination
 - (i) All applicants must successfully complete an EMS Board approved practical examination.
 - (ii) Applicants who fail to pass the practical examination shall be eligible to reapply for examination.

Paragraphs (2) and (4) of rule 1200-12-1-.04 Emergency Medical Technician are amended by deleting the existing language in its entirety and substituting instead the following language and renumbering the subparagraphs accordingly, so that as amended, the new paragraphs shall read:

- (2) EMT Paramedic Technical Certificate Requirements
 - (a) Must meet all the Emergency Medical Technician licensure requirements in paragraph (1).
 - (b) Effective July 1, 2005 any individual applying for initial EMT-P licensure must successfully complete an EMT Paramedic Technical Certificate program accredited or recognized by the Division of Emergency Medical Services of the Tennessee Department of Health.
 - (c) Must successfully complete an EMS Board approved Emergency Medical Technician Paramedic Technical Certificate Program, including completion of all examinations within two (2) years of completion of training.
 1. Written Examination
 - (i) Achieve a passing score on any EMS Board approved examination.
 - (ii) Applicants who fail to pass the examination shall be eligible to reapply for examination.
 2. Practical Examination
 - (i) An EMS Board approved practical examination must be successfully completed by all applicants.
 - (ii) Applicants who fail to pass the practical examination shall be eligible to reapply for examination.
 - (e) Must submit an Application for Licensure form as provided by the Division of Emergency Medical Services.
 - (f) Must remit the appropriate licensure and application fees, if applicable, as determined under rule 1200-12-1-.06.
- (4) License Classification for the Emergency Medical Technician. Upon remitting the license fee, if applicable, and approval of the appropriate application, individuals completing license procedures will be

licensed in a category representative of the experience and additional qualifications recognized by the Division of Emergency Medical Services.

- (a) Emergency Medical Technician: a person who has successfully completed the EMT training course and who has qualified by examinations to perform pre-hospital emergency patient care. Upon demonstration of additional training and successful completion of qualifying examinations, the EMT may initiate and administer intravenous fluid therapy, and other procedure(s) approved by the EMS Board as listed in paragraph (3), upon the order of a physician or authorized registered nurse.
- (b) Emergency Medical Technician-Paramedic Technical Certificate: a person who has successfully completed an accredited technical certificate program in Tennessee for Emergency Medical Technician-Paramedics or comparable training and education in another state, and received endorsement from the training institution; who has successfully completed written and practical qualifying examinations; and who is licensed to practice advanced emergency medical care upon the order or under the supervision of a physician or authorized registered nurse.
- (c) Emergency Medical Technician-Paramedic Critical Care: a person who is licensed as a Tennessee Emergency Medical Technician Paramedic and holds, at a minimum, an associate's degree from a regionally accredited college or university and has successfully completed a critical care paramedic course recognized by the Division of Emergency Medical Services of the Tennessee Department of Health or comparable training and education in another state, and received endorsement from the training institution; and who is licensed to practice advanced emergency medical care upon the order or under the supervision of a physician or authorized registered nurse.
- (d) Licensures in categories previously established by the EMS Board shall continue in effect until expiration or renewal within the categories established above.

Subparagraphs (a) and (b) of paragraph (7) of rule 1200-12-1-.04 Emergency Medical Technician are amended by deleting the existing language in its entirety and substituting instead the following language and renumbering the subparagraphs accordingly, so that as amended the new subparagraphs shall read:

(7) Reinstatement of a lapsed license

(a) Emergency Medical Technician

- 1. When the license has lapsed for one (1) year or less, an individual may reinstate the license by meeting and completing all applicable license and license renewal standards, successfully completing the EMS Board approved written examination and submitting all applicable fees.
- 2. When the license has lapsed for more than one (1) year, but less than two (2) years an individual may reinstate the license by successfully completing any EMS Board approved written and practical examination and submitting all applicable fees.
- 3. When the license has lapsed for two (2) years or more, an individual must complete the EMT course in its entirety and comply with license requirements in effect under paragraph (1).

(b) The EMT-Paramedic

- 1. When the license has lapsed for one (1) year or less, an individual may reinstate the license by meeting and completing all applicable license and license renewal standards, successfully completing the EMS Board approved written examination.

2. When the license has lapsed for more than one (1) year, but less than two (2) years an individual may reinstate the license by successfully completing any EMS Board approved written and practical examination and submitting all applicable fees.
3. When the license has lapsed for two (2) years or more, an individual must complete the EMT-Paramedic course in its entirety and comply with license requirements.

Paragraphs (8) and (9) of rule 1200-12-1-.04 Emergency Medical Technician are amended by deleting the existing language in its entirety and substituting instead the following language, adding a new paragraph (9) and renumbering the existing paragraph (9) accordingly as paragraph (10), so that as amended, the new paragraphs shall read:

- (8) Out-of-state requirements for License. Any EMT or EMT-Paramedic who holds current certification/license from another state and who has successfully completed an approved U.S. Department of Transportation EMT or EMT-Paramedic course may apply for Tennessee EMT or EMT-Paramedic license by complying with the following:
 - (a) conform to all license requirements for Tennessee Emergency Medical Technicians or EMT-Paramedics; and
 - (b) submit appropriate documentation of extended skills training conducted by an authorized instructor of a Tennessee Accredited EMS Training Institutions; and
 - (c) successful completion of any EMS Board approved written and practical examinations.
 - (d) submit the appropriate application forms and fees, if applicable, to the Division of Emergency Medical Services.
- (9) Out-of-state requirements for License. Any EMT or EMT-Paramedic who has successfully completed an approved U.S. Department of Transportation EMT Basic or EMT Paramedic course while employed with the federal government and holds current certification from National Registry of Emergency Medical Technicians for the Emergency Medical Technician-Basic or Emergency Medical Technician– Paramedic may apply for Tennessee EMT or EMT-Paramedic license by complying with the following:
 - (a) conform to all license requirements for Tennessee Emergency Medical Technicians or EMT-Paramedics; and
 - (b) submit appropriate documentation of extended skills training conducted by an authorized instructor of a Tennessee Accredited EMS Training Institution; and
 - (c) submit the appropriate application forms and fees, if applicable, to the Division of Emergency Medical Services.
- (10) Personnel licensed by the Department, upon a change of name or address shall notify the Division of Emergency Medical Services in writing within thirty (30) days of such change. Notifications for renewal or disciplinary action shall be posted to the address listed on file with the Division and, unless returned by the post office, shall constitute effective notice for renewal or action upon license status. Return by the post office shall be interpreted as a willful violation for failure to retain a current address on file.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-508, 68-140-509, and 68-140-518.

Subparagraph (a) of paragraph (4) of rule 1200-12-1-.06 Schedule of Fees is amended by adding a new part 4 establishing a license fee for Emergency Medical Technician – Paramedic Critical Care, so that as amended, the new subparagraph shall read:

- (4) Emergency Medical Services Personnel Fees – Personnel applying for licensure, certification, authorization, renewal, or reinstatement shall remit application processing and license fees as follows.

(a) Fees for licensed personnel

	Application	License
1. Emergency Medical Technician –Basic	\$50.00	\$75.00
2. Emergency Medical Technican –Basic -IV	\$70.00	\$80.00
3. Emergency Medical Tech. – Paramedic \$100.00	\$75.00	
4. Emergency Medical Tech. Paramedic Critical Care	N/A	\$75.00

Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-506, 68-39-508, and 68-140-517..

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-36)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH LICENSURE AND REGULATION
DIVISION OF EMERGENCY MEDICAL SERVICES**

CHAPTER 1200-12-1

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A. §§ 68-140-504, 68-140-505, and 68-140-705. 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, Ground Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:00 a.m., Central Standard Time, on the 9th day of December, 2003.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical Services 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 plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the department's ADA coordinator at the Andrew Johnson Tower, 11th Floor, 710 James Robertson Parkway, Nashville, TN 37243-0675, 615-741-6350.

For a copy of the entire text of the notice of rulemaking, contact Joseph B. Phillips, Director, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Paragraph (6) of rule 1200-12-1-.19 Automated External Defibrillator Programs is amended by adding a new subparagraph (i), adding another approved training program, so that as amended, the paragraph shall read:

- (6) The following training programs in cardiopulmonary resuscitation and AED use are consistent with the scientific guidelines of the American Heart Association and have been approved by the Tennessee Emergency Medical Services Board.
 - (a) Heartsaver AED and Basic Life Support for Healthcare Professional CPR and AED Courses of the American Heart Association
 - (b) Advanced Cardiac Life Support Course of the American Heart Association (for Healthcare professionals in conjunction with Basic Life Support for Healthcare Providers)
 - (c) Workplace First Aid and Safety; Adult CPR/AED Training Course of the American Red Cross
 - (d) AED Training Course of the American Red Cross (in conjunction with Adult and Professional Rescuer CPR courses)
 - (e) AED Course of the National Safety Council (in conjunction with AHA, NSC, or ARC Adult CPR Courses)
 - (f) Heartsaver FACTS Course of the National Safety Council or American Heart Association;
 - (g) Medic First Aid family of programs for Basic Life Support for Professionals and AED Training by EMP International, Inc.
 - (h) American Safety and Health Institute programs for Basic CPR and AED education and training.
 - (i) Coyne First Aid CPR and AED training program.

Authority: T.C.A. §§4-5-202, 68-140-504, 68-140-505, and 68-140-705.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-38)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
DIVISION OF FAMILY ASSISTANCE**

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 15th Floor, Puett Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CDT on, Tuesday, November 18, 2003.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Fran McKinney, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563 (TTY)-(800) 270-1349.

For a copy of the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-47
NON-FINANCIAL ELIGIBILITY REQUIREMENTS
FAMILIES FIRST PROGRAM**

AMENDMENTS

Rule 1240-1-47-.10 Eligible Aliens, is amended by deleting paragraph (2) in the entirety, and by substituting the following new language, so that, as amended, paragraph (2) shall read:

- (2) Description Of Eligible Aliens.
 - (a) Citizens and eligible aliens. The Department shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:
 - 1. A United States citizen; or
 - 2. An alien that, under federal laws and regulations, is permitted to receive Families First benefits funded by federal TANF dollars. These eligible aliens may include, but are not necessarily limited to, certain individuals lawfully present in the United States as a result of the application of the Immigration and Nationality Act and the Immigration Reform and Control Act of 1986.

Authority: T.C.A. §§4-5-201 et seq.; 71-1-105; 71-3-154; 71-3-158; 42 USCA § 1315(a); 45 CFR 233.50 and 233.51.

**CHAPTER 1240-1-49
FAMILIES FIRST EMPLOYMENT AND TRAINING**

AMENDMENTS

Rule 1240-1-49-.04 Failure To Comply, Conciliation, Good Cause, And Sanctions, is amended by deleting subparagraph (b) under paragraph (1) in the entirety, and by substituting the following new language, so that, as amended, subparagraph (b), paragraph (1) shall read:

- (b) Conciliation. Conciliation provides an opportunity for an individual to discuss non-compliance issues with specified staff prior to imposition of sanctions. Before a sanction is imposed, a notice will be sent to the individual scheduling a meeting to identify any barriers or problems that may be related to the noncompliance, and resolve them if possible. This conciliation conference may be face-to-face or over the phone. If good cause for noncompliance does not exist, the individual will be offered an opportunity and 10 calendar days to comply with the work requirement. Failure of the individual to respond to the scheduled appointment or to comply with the work requirement within the 10 calendar day period will result in the imposition of the sanction without conciliation.

Authority: T.C.A. §§4-5-201 et seq.; 71-1-105; 71-1-105(12), 71-3-151 through 71-3-165, T.C.A. 71-3-154(a)(d)(1)(B) and (C), (g) and (h), 71-3-157(c)(1) and (f); 42 USCA § 1315(a); Federal Waiver of July 16, 1996. I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Human Services.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-40)

**BOARD OF MEDICAL EXAMINERS- 0880
BOARD OF NURSING - 1000**

There will be a hearing before the Tennessee Board of Medical Examiners and the Tennessee Board of Nursing to consider the promulgation an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-204, 63-7-123, and 63-7-207. 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 17th day of November, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULE**AMENDMENT**

Rule 0880-6-.02 Clinical Supervision Requirements, is amended by deleting paragraphs (10) and (11) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (10) and (11) shall read:

- (10) Any prescription written and signed or drug issued by a nurse practitioner under the supervision and control of a supervising physician shall be deemed to be that of the nurse practitioner.
- (11) The supervising physician shall make provision for preprinted prescription pads bearing the name, address and telephone number of the supervising physician and that of the nurse practitioner. The nurse practitioner shall sign his or her own name on each prescription so written. Where the preprinted prescription pad contains the names of more than one (1) physician, the nurse practitioner shall indicate on the prescription which of those physicians is the nurse practitioner's primary supervising physician by placing a checkmark beside or a circle around the name of that physician.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-204, 63-7-123, and 63-7-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of September, 2003. (09-16)

BOARD OF NURSING - 1000

There will be a hearing before the Tennessee Board of Nursing to consider the promulgation of a new rule and amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207. 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 25th day of November, 2003.

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1000-1-.14, Standards of Nursing Competence, is amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting parts (3) (b) 6. and (3) (b) 10. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) but not its parts and substituting instead the following language, so that as amended, the new paragraph (3) but not its subparagraphs, the new parts (3) (b) 6. and (3) (b) 10., and the new subparagraph (3) (d) but not its parts shall read:

- (3) All applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.
- (3) (b) 6. Having initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to practice. This part is required for advanced practice nurses certified pursuant to 1000-4-.03.
- (3) (b) 10. Having successfully completed five (5) contact hours of continuing education / in-service education applicable to the licensee's practice.
- (3) (d) For Registered Nurses who have not practiced for more than (5) years and do not intend to practice in the future, compliance with this subparagraph is not required. For Registered Nurses who have not practiced for more than five (5) years and are applicants for licensure, renewal of license, reactivation of license, or reinstatement of license, the appropriate application and one (1) of the following shall be submitted as evidence of continued nursing competence:

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-114, and 63-7-207.

Rule 1000-1-.14, Standards of Nursing Competence, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraph accordingly.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-114, and 63-7-207.

Rule 1000-1-.15, Scope of Practice, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Determination and Pronouncement of Death – Pursuant to the restrictions and guidelines found in T.C.A. § 68-3-511, a registered nurse may make an actual determination and pronouncement of death for a resident of a hospice or a nursing home, or for a patient in a hospital, or if the deceased patient was receiving the services of a licensed home care organization at the time of death.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-207, 68-3-511, 68-11-201, and Public Chapter 85 of the Public Acts of 2003.

Rule 1000-2-.14, Standards of Nursing Competence, is amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting parts (3) (b) 6. and (3) (b) 9. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) but not its parts and substituting instead the following language, so that as amended, the new paragraph (3) but not its subparagraphs, the new parts (3) (b) 6. and (3) (b) 9., and the new subparagraph (3) (d) but not its parts shall read:

- (3) All applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.
- (3) (b) 6. Having initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to practice.
- (3) (b) 9. Having successfully completed five (5) contact hours of continuing education / in-service education applicable to the licensee's practice.
- (3) (d) For Practical Nurses who have not practiced for more than (5) years and do not intend to practice in the future, compliance with this subparagraph is not required. For Practical Nurses who have not practiced for more than five (5) years and are applicants for licensure, renewal of license, reactivation of license, or reinstatement of license, the appropriate application and one (1) of the following shall be submitted as evidence of continued nursing competence:

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-114, and 63-7-207.

Rule 1000-2-.14, Standards of Nursing Competence, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraph accordingly.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-114, and 63-7-207.

NEW RULE

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1000-4-.08 Treatment of Pain

1000-4-.08 TREATMENT OF PAIN. The purpose of this rule is to recognize that some dangerous drugs and controlled substances are indispensable for the treatment of pain, and are useful for relieving and controlling many other related symptoms that patients may suffer. It is the position of the Board of Nursing that these drugs may be prescribed for the treatment of pain and other related symptoms after a reasonably based diagnosis has been made, in adequate doses, and for appropriate lengths of time, which in some cases may be as long as the pain or related symptoms persist. The Board recognizes that pain, including intractable pain, and many other related symptoms are subjective complaints and that the appropriateness and the adequacy of drug and dose will vary from individual to individual. The Advanced Practice Nurse is expected to exercise sound judgment in treating pain and related symptoms with dangerous drugs and controlled substances.

- (1) Definitions. The following words and terms, as used in this rule shall have the following meanings in the context of providing medications for pain and related symptoms.
 - (a) Abuser of narcotic drugs, controlled substances and dangerous drugs - A person who takes a drug or drugs for other than legitimate medical purposes.
 - (b) Intractable pain - A pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.
 - (c) Non-therapeutic in nature or manner - A medical use or purpose that is not legitimate.
 - (d) Prescribing pharmaceuticals or practicing consistent with the public health and welfare - Prescribing pharmaceuticals and practicing Advanced Practice Nursing for a legitimate purpose in the usual course of professional practice.
- (2) No Advanced Practice Nurse is required to provide treatment to patients with intractable pain with opiate medications but when refusing to do so shall inform the patient that there are practitioners whose primary practice is in the treatment of severe, chronic, intractable pain with methods including the use of opiates. If the patient requests a referral to such a practitioner and the Advanced Practice Nurse makes such a referral, that referral shall be noted in the patient's medical records.
- (3) If an Advanced Practice Nurse provides care for persons with intractable pain, with or without the use of opiate medications, to the extent that those patients become the focus of the Advanced Practice Nurse's practice the Advanced Practice Nurse must be prepared to document specialized education in pain management sufficient to bring the Advanced Practice Nurse within the current standard of care in that field which shall include education on the causes, different and recommended modalities for treatment, chemical dependency and the psycho/social aspects of severe, chronic intractable pain.
- (4) Guidelines - The Tennessee Board of Nursing will use the following guidelines to determine whether an Advanced Practice Nurse's conduct violates T.C.A. §63-7-115 (a) (1) (A) through (G) in regard to the prescribing, administering, ordering, or dispensing of pain medications and other drugs necessary to address their side effects.
 - (a) The treatment of pain, including intractable pain, with dangerous drugs and controlled substances serves a legitimate purpose when done in the usual course of professional practice.
 - (b) An Advanced Practice Nurse duly authorized to practice in Tennessee and to prescribe controlled substances and dangerous drugs in this state shall not be subject to disciplinary action by the Board for prescribing, ordering, administering, or dispensing dangerous drugs or controlled substances for the treatment and relief of pain, including intractable pain, in the usual course of professional practice for a legitimate purpose in compliance with applicable state and federal law.
 - (c) Prescribing, ordering, administering, or dispensing dangerous drugs or controlled substances for pain will be considered to be for a legitimate purpose if based upon accepted scientific knowledge of the treatment of pain, including intractable pain, not in contravention of applicable state or federal law, and if prescribed, ordered, administered, or dispensed in compliance with the following guidelines where appropriate and as is necessary to meet the individual needs of the patient:

1. After a documented medical history, which may be provided orally or in writing by the patient, and physical examination by the Advanced Practice Nurse providing the medication including an assessment and consideration of the pain, physical and psychological function, any history and potential for substance abuse, coexisting diseases and conditions, and the presence of a recognized medical indication for the use of a dangerous drug or controlled substance;
 2. Pursuant to a written treatment plan tailored for the individual needs of the patient by which treatment progress and success can be evaluated with stated objectives such as pain relief and/or improved physical and psychosocial function. Such a written treatment plan shall consider pertinent history and physical examination as well as the need for further testing, consultations, referrals, or use of other treatment modalities;
 3. The Advanced Practice Nurse should discuss the risks and benefits of the use of controlled substances with the patient or guardian;
 4. Subject to documented periodic review of the care by the Advanced Practice Nurse at reasonable intervals in view of the individual circumstances of the patient in regard to progress toward reaching treatment objectives which takes into consideration the course of medications prescribed, ordered, administered, or dispensed as well as any new information about the etiology of the pain;
 5. Complete and accurate records of the care provided as set forth in parts 1. through 4. should be kept. When controlled substances are prescribed, names, quantities prescribed, dosages, and number of authorized refills of the drugs should be recorded, keeping in mind that pain patients with a history of substance abuse or who live in an environment posing a risk for medication misuse or diversion require special consideration. Management of these patients may require closer monitoring by the Advanced Practice Nurse managing the pain and consultation with appropriate health care professionals.
- (d) A decision by an Advanced Practice Nurse not to strictly adhere to the provisions of part 3. will, for good cause shown, be grounds for the Board to take no disciplinary action in regard to the Advanced Practice Nurse. Each case of prescribing for pain will be evaluated on an individual basis. The Advanced Practice Nurse's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning, and recognizing that some types of pain cannot be completely relieved.
- (e) If the provisions of this paragraph are met, and if all drug treatment is properly documented, the Board will consider such practices as prescribing in a therapeutic manner, and prescribing and practicing medicine in a manner consistent with public health and welfare.
- (f) Quantity of pharmaceutical and chronicity of prescribing will be evaluated on the basis of the documented appropriate diagnosis and treatment of the recognized medical indication, documented persistence of the recognized medical indication, and properly documented follow-up evaluation with appropriate continuing care as set out in this rule.
- (g) An Advanced Practice Nurse may use any number of treatment modalities for the treatment of pain, including intractable pain, which are consistent with legitimate medical purposes.

- (h) These rules shall not be construed so as to apply to the treatment of acute pain with dangerous drugs or controlled substances for purposes of short-term care.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-123, 63-7-115, 63-7-126, and 63-7-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of September, 2003. (09-05)

BOARD OF REGISTRATION IN PODIATRY - 1155

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of a new rule and an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 17th day of December, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 1155-2-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Subpoenas, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-3-126.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-144, 63-3-106, 63-3-119, 63-3-120, and 63-3-126.

NEW RULE

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1155-2-.21 Podiatric Professional Corporations and Podiatric Professional Limited Liability Companies

1155-2-.21 PODIATRIC PROFESSIONAL CORPORATIONS AND PODIATRIC PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Podiatric Professional Corporations (PPC) – Except as provided in this rule Podiatric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A PPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic PPC doing business in Tennessee:
 1. Podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3; and/or
 2. A general partnership in which all partners are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3; and/or
 3. A PPC in which all shareholders are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 4. A Podiatry Professional Limited Liability Company (PPLLC) in which all members are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 5. A foreign PPC or PPLLC in which all shareholders/members are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or composed of entities which are directly or indirectly owned by such licensed podiatrists.
 6. A foreign or domestic physician general partnership, physician professional corporation or physician professional limited liability company doing business in Tennessee in which all shareholders/members are either physicians (except radiologists, pathologists, or anesthesiologists) licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 and/or podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or composed of entities which are directly or indirectly owned by such licensed physicians (except radiologists, pathologists, or anesthesiologists) and/or podiatrists.
 - (c) Officers and Directors of Podiatric Professional Corporations
 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by § T.C.A. 48-101-610 (d) (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;

- (ii) Assistant Secretary;
- (iii) Treasurer; and
- (iv) Assistant Treasurer.

2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by § T.C.A. 48-101-610 (d) (3) and subparagraph (1) (b) of this rule shall be directors of a PPC.

(d) Practice Limitations

1. Engaging in, or allowing another podiatrist incorporator, shareholder, officer, or director, while acting on behalf of the PPC, to engage in, podiatric practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 1155-2-.13 and/or Tennessee Code Annotated, Section 63-3-119 (4).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PPC.
 3. Nothing in these rules shall be construed as prohibiting a PPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatrist incorporators, directors, officers, shareholders, employees or contractors of the PPC who are practicing as podiatrists, as defined by Tennessee Code Annotated § 63-3-101.
 4. Nothing in these rules shall be construed as prohibiting a podiatrist from owning shares of stock in any type of professional corporation other than a PPC so long as such ownership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing as a podiatrist, as defined by Tennessee Code Annotated § 63-3-101.
- (2) Podiatric Professional Limited Liability Companies (PPLLC) - Except as provided in this rule Podiatric Professional Limited Liability Companies shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 248.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
 - (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 only the following may be members of a foreign or domestic PPLLC doing business in Tennessee:
 1. Podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3; and/or
 2. A general partnership in which all partners are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3; and/or

3. A PPC in which all shareholders are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 4. A Podiatric Professional Limited Liability Company (PPLL) in which all members are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 5. A foreign PPC or PPLL in which all shareholders/members are podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice Podiatric in Tennessee or composed of entities which are directly or indirectly owned by such licensed podiatrists.
 6. A foreign or domestic physician general partnership, physician professional corporation or physician professional limited liability company doing business in Tennessee in which all shareholders/members are either physicians (except radiologists, pathologists, or anesthesiologists) licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 and/or Podiatrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or composed of entities which are directly or indirectly owned by such licensed physicians (except radiologists, pathologists, or anesthesiologists) and/or podiatrists.
- (c) Managers or Governors of a PPLL
1. All, except the following managers, must be persons who are eligible to form or become members of a podiatric professional limited liability company as limited by § T.C.A. 48-248-401 (d) (3) and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 2. Only persons who are eligible to form or become members of a podiatric professional limited liability company as limited by § T.C.A. 48-248-401 (d) (3) and subparagraph (2) (b) of this rule shall serve on the Board of Governors of a PPLL.
- (d) Practice Limitations
1. Engaging in, or allowing another podiatrist member, officer, manager, or governor, while acting on behalf of the PPLL, to engage in podiatric practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the professional ethics enumerated in Rule 1155-2-.13 and/or Tennessee Code Annotated, Section 63-3-119 (4).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PPLL.
 3. Nothing in these rules shall be construed as prohibiting a PPLL from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatrist members, governors, officers, managers, employees or contractors of the PPLL who are practicing as podiatrists, as defined by Tennessee Code Annotated § 63-3-101.

4. Nothing in these rules shall be construed as prohibiting a Podiatrist from being a member of any type of professional limited liability company other than a PPLLC so long as such membership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing as a podiatrist as defined by Tennessee Code Annotated, Section 63-3-101.
 5. All PPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a PPC or a PPLLC has violated or is violating any provision of Title 48 Chapters 101 and/or 248 shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the PPC and/or PPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the PPC and/or PPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the PPC and/or PPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to the appropriate sections of Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provision of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the PPC and/or PPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a PPC and/or PPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)-(3) and/or 48-248-409 (1)-(3).
- (4) Violation of this rule by any podiatrist individually or collectively while acting as a PPC or as a PPLLC may subject the podiatrist(s) to disciplinary action pursuant to Tennessee Code Annotated, Section 63-3-119 (4).

Authority: T.C.A. §§4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-3-106, 63-3-110, and 63-3-119.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of September, 2003. (09-27)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Ducks Unlimited Conference Center of the Ducks Unlimited Headquarters, located at One Waterfowl Way, Memphis, Tennessee, commencing at 9:00 A.M., local time, on the 20th day of November, 2003.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1660-2-7

RULES AND REGULATIONS GOVERNING OPERATIONS OF VESSELS

AMENDMENT

Rule 1660-2-7-.11 Special Areas shall be amended by deleting paragraph (5) in its entirety and replacing it with the following so that, as amended, it shall read:

- (5) Water skiing is prohibited on Great Falls Reservoir in the Rock River Embayment from its mouth upstream to Blanks Bridge.

Authority: T.C.A. §§70-1-206, 69-10-209.

**NEW RULE
RULES
OF
THE TENNESSEE WILDLIFE RESOURCES AGENCY**

**CHAPTER 1660-1-16
RULES AND REGULATIONS GOVERNING
WILDLIFE CAPTURE, TRANSPORT AND RELEASE PERMIT**

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1660-1-16-.01 PURPOSE

Before any person in the State of Tennessee may capture, transport, and release any live wildlife species within the State, he or she must first obtain a Wildlife Capture, Transport and Release (WCTR) Permit, except as otherwise provided, from the Executive Director of the Wildlife Resources Agency, in accordance with the provisions of this rule.

1660-1-16-.02 DEFINITIONS

- (1) The term “wildlife,” for the purpose of these regulations only, is defined as red fox, gray fox, raccoon, and bobwhite quail. These are the only species that may be captured, transported and released pursuant to the WCTR Permit. Further, the capture, transport and release of bobwhite quail will be approved on a case-by-case basis and only after evaluation by the Tennessee Wildlife Resources Agency.
- (2) The term “permit,” as referred to in these regulations, is the Wildlife Capture, Transport and Release (WCTR) Permit.

1660-1-16-.03 PERMIT

- (1) Any person desiring to capture, transport and release wildlife must first obtain a Wildlife Capture, Transport and Release Permit from the Tennessee Wildlife Resources Agency. Further, applicants for the permit are required to have a license that allows trapping.
- (2) Property owners are exempt from the permit requirement if they capture wildlife from their own land and release back onto their own. If a landowner, however, wishes to trap from his/her own land and move the captured wildlife to someone else’s land, he/she must have a trapping license, a Wildlife Capture, Transport and Release Permit and permission of the landowner to release the wildlife onto his property.
- (3) Persons conducting work under the provisions of the Nuisance Animal Damage Control Rule (1660-1-21) are exempt from the permit requirements of this rule.
- (4) A permit is valid for the current license year only and will expire the last day of February of that license year.

- (5) All applicants are required to have or provide the following:
 - (a) All permit holders are required to maintain accurate and complete records on activities provided for in this rule on forms provided by the Tennessee Wildlife Resources Agency.
 - (b) Along with other information that may be required on the above forms, applicants must specify the species to be trapped, and the specific counties, location of properties and names of the owner(s) of properties where the applicant intends to capture the wildlife and the specific counties, location of properties and names of the owner(s) of properties where the wildlife will be released.
 - (c) When the permittee is transporting wildlife, he/she shall possess the WCTR Permit. The wildlife and all pertinent records will be open to inspection by a representative of the Tennessee Wildlife Resources Agency prior to their release.
 - (d) The permit shall be valid only for the person listed on the permit to capture, transport, and release wildlife and may not be transferred to another individual.
 - (e) The permit holder must have both the written permission from the property owner where the wildlife is captured and the written permission of the property owner where the wildlife will be released.

1660-1-16-.04 RESTRICTIONS

- (1) Pursuant to T.C.A. 70-4-201, wildlife captured may not be sold. Thus, all wildlife taken under authority of the Wildlife Capture and Release Permit must be released back into the wild.
- (2) Wildlife captured, transported, and released must be handled in a manner that minimizes risk of injury to the animal.
- (3) Wildlife may only be released into the wild onto areas approved by the Tennessee Wildlife Resources Agency and only in the same county or adjacent county where captured. The release of wildlife, captured under the provisions of this rule, onto private wildlife preserves is specifically prohibited.
- (4) Wildlife must be released within 12 hours after capture.
- (5) All traps left unattended by the permit holder must be clearly marked with the permit holder's name and permit number.
- (6) Only the types of traps listed in the Manner and Means for Taking Wildlife Proclamation as approved by Tennessee Wildlife Resources Commission will be allowed for the capture of furbearers.
- (7) Bobwhite quail may only be captured in traps approved by the Tennessee Wildlife Resources Agency. Only banded pen-reared birds may be used for call birds. All migratory and/or non-target birds captured in these traps must be released.
- (8) Wildlife captured, transported, and released shall be taken only during periods specified in a proclamation promulgated by the Tennessee Wildlife Resources Commission.
- (9) The Executive Director may require that the captured wildlife be marked with an identifying band or tag prior to release.

1660.1-16-.05 SUSPENSION OR REVOCATION

- (1) The Executive Director may, pursuant to and in accordance with the Uniform Administrative Procedures Act (UAPA), suspend any activity provided for under the permit if the activity poses a threat to the health and safety of humans, domestic animals, or wildlife as defined by T.C.A. 70-1-101(a)(41).
- (2) In accordance with and pursuant to the UAPA, the Executive Director may refuse to issue a permit or may revoke an existing permit if the applicant or permittee violates any of these rules and regulations or violates any law governing the wildlife of this state or country. If an applicant for or holder of a WCTR Permit has been charged with a violation of these rules and regulations or state or federal wildlife laws, such permit may be suspended pending adjudication.

Authority: T.C.A. §§70-1-206, 70-4-120.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2003. (09-39)

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CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning September 2, 2003 and ending September 30, 2003.


RILEY C. DARNELL
Secretary of State

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