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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

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

ATTORNEY GENERAL'S GUIDELINES FOR EVALUATION OF PROPOSED REGULATORY OR ADMINISTRATIVE ACTIONS TO AVOID UNCONSTITUTIONAL TAKINGS OF PRIVATE PROPERTY

I. PURPOSE

These guidelines are submitted by the Office of the Attorney General pursuant to Chapter 924 of the Public Acts of 1994 (codified at T.C.A. ' 12 1 201, *et seq.*). Section 4 of the Act requires the Attorney General to develop guidelines to assist state agencies in the identification and evaluation of government actions that may result in an unconstitutional taking of private property, in order to avoid an unnecessary burden on the public treasury and unwarranted interference with private property rights. The guidelines establish a basic framework for agencies to use in their internal evaluations of the takings implications of administrative and regulatory policies and actions. The guidelines do not prevent an agency from making an independent decision about proceeding with a specific policy or action which the decisionmaker determines is authorized by law.

These guidelines are intended solely as internal and predecisional management aids for agency decisionmakers and should not be construed as an opinion by the Attorney General on whether a specific action constitutes a taking. A private party shall not be deemed to have a cause of action against an agency for failure to follow any suggested procedures contained in the guidelines.

II. SCOPE

An agency should evaluate, for their takings implications, its administrative and regulatory policies and actions that affect, or may affect, the use or value of private real property in accordance with the framework established in these guidelines, including, but not limited to, regulations that propose or implement licensing, permitting or certification requirements, conditions or restrictions otherwise imposed by an agency on private property use, and any actions relating to or causing the physical occupancy or invasion of private property. These guidelines are limited to examination of takings of private real property and are not intended to govern or affect issues such as validity of searches or investigative or discovery demands which are controlled by other statutory and constitutional law.

The following policies and actions are excluded from evaluation under these guidelines:

1. The exercise of the power of eminent domain;
2. The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;

3. Orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute; and
4. The discontinuation of government programs.

Examples of agency actions that would be excluded under these guidelines include, but are not limited to, tax enforcement and collection activities pursuant to T.C.A. §67-1-1401, *et seq.*, or other authority.

III. GENERAL PRINCIPLES

A. Constitutional and Statutory Framework

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. Article 1, Section 21 of the Tennessee Constitution provides that “[n]o man’s particular services shall be demanded, or property taken, or applied to public use, . . . without just compensation. . . .” The government may not, therefore, take property except for public purposes within its constitutional authority and only upon payment of just compensation.

The State has historically used its power of eminent domain under T.C.A. ‘ 29 16 101, *et seq.* to acquire private property for a public purpose, such as a highway or recreation area, and in so doing has compensated property owners through a formal condemnation proceeding. The government, however, may also become liable for payment of just compensation to private property owners without the initiation of formal proceedings, when private property has either been physically occupied or invaded by the government on a permanent or temporary basis, or so affected by governmental regulation as to have been effectively taken despite the fact the government has neither physically invaded, confiscated nor occupied the property. In contrast to the formal exercise of eminent domain, the private property owner can obtain compensation by filing an “inverse condemnation” suit.

B. Nature of a Taking

A taking of private property rights may occur when permanent or temporary government actions result in the physical occupancy of property, the physical invasion of property, either directly or indirectly (see discussion in B. 2. below), or the regulation of property.

1. Physical Occupancy

As a general rule, a physical occupation of property by the government which is permanent is a taking, regardless of how slight the occupancy, the minimal economic impact on the property owner or whether the government action achieves an important public benefit. Aside from formal condemnation exercises, examples of physical occupancy takings include permanent utility easements and access easements. In some circumstances, however, even a temporary access easement may be deemed to be a physical taking. See discussion in B. 2. below.

2. Physical Invasion

The concept of permanent physical occupation does not necessarily require that in every instance the occupation be exclusive or continuous and uninterrupted. Physical invasions of property may also give rise to a taking where the invasions are of a recurring and substantial nature, or of finite duration, and thereby amount to temporary takings. Examples of physical invasion takings may include, among others, flooding and water related intrusions resulting from government projects, access easements, and aviation easement intrusions. The last example is not necessarily limited to direct overflights, but may result where there is continuous interference, through noise, pollution or vibration, with the beneficial use and enjoyment of

property. Moreover, the government action that causes a physical invasion must result from some purposeful or intentional action for a taking to exist.

3. Regulatory Takings

Land use regulations that affect the value, use, or transfer of private property may constitute a taking if the regulations are adjudged to go too far. The greater the deprivation of use, the greater the likelihood that a taking will be found.

While there is no set formula for determining when government action constitutes a taking, an agency should consider the following criteria:

- a. Whether the policy or action will substantially advance a legitimate public purpose of the enabling statute, where the policy or action is in furtherance of obligations imposed or authorized by statute. If the regulation fails to substantially advance a legitimate state interest, goes beyond the government's powers under common law nuisance doctrine, or no nexus exists between the asserted government purpose and the regulation, a taking may be found.
- b. Whether the regulation denies the landowner all economically viable use of his property or substantially interferes with his reasonable investment backed expectations. In this regard, the timing of the regulatory enactment with respect to the landowner's acquisition of title may be relevant, but not necessarily dispositive.
- c. If the regulation advances a legitimate public purpose, but is not reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Regulation of an individual's property that conditions approval of a permit/development on the dedication of some property to public use must not be disproportionate to the degree to which the individual's property use is contributing to the overall problem. The less direct, immediate and demonstrable the contribution of the property related activity to the harm to be addressed, the greater the risk that a taking will be found.
- d. The degree to which a regulatory action closely resembles, or has the effect of, physical invasion or occupation of property. For example, an intended policy or action that totally abrogates an essential property interest, such as the right to exclude others by imposing an access easement, may, in certain circumstances, constitute a taking. See discussion in B. 2. above and C. 1. below.

C. Special Situations and Suggested Procedures

When implementing a regulatory policy or action and evaluating the takings implications of that policy or action, agencies should consider the following special factors and suggested procedures:

1. Permitting and Certification Programs

The programs of many agencies require private parties to obtain permits or certification before making specific uses of, or acting with respect to, private property. An agency may place conditions on the granting of such permits or certification, or deny the same, without necessarily effecting a taking for which compensation is due, however, the agency should first consider the following factors in determining whether a taking may result:

- a. Whether the government action will deprive the owner of essentially all economically viable or productive use of his property (see discussion below in C. 2. regarding economic impact of regulation); and
- b. The degree to which the state imposed restriction interferes with the owner's reasonable investment backed expectations; and
- c. Whether the condition imposed by the government will result in a permanent physical occupation or invasion of the property, such as an access easement; and
- d. Whether a condition that requires a dedication of property to public use is reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Where public health and safety is the asserted regulatory purpose, then the health and safety risk posed by the property use must be identified with as much specificity as possible and should be real and substantial, and not merely speculative.

2. Assessing Economic Impact of the Regulation as Applied

In assessing whether a proposed policy or action may effect a taking of private property, an agency may want to consider the economic impact of a regulation by examining the following factors:

- a. The character and present use of the property, as well as the character and anticipated duration of the proposed or intended government action; and
- b. The likely degree of economic impact on all identified property and economic interests. A mere diminution in the value of the property to be regulated by the government's denial of the highest and best use of the property will not generally, by itself, amount to a taking (but see discussion below in C. 3. regarding the "parcel as a whole"); and
- c. Whether the proposed policy or action carries benefits to the private property owner that offset or otherwise mitigate the adverse economic impact of the proposed policy or action; and
- d. Whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

3. The "Parcel as a Whole" Analysis

In determining the economic impact of a proposed or intended government action, an agency should consider the impact on the "parcel as a whole," and not merely the part of the parcel that is subject to regulation. The parcel as a whole is not limited by its geographic dimensions, but also has a temporal aspect defined by the term of years of the owner's interest in the land. Generally, if an owner has been denied economic use of a segment of a parcel, but retains viable economic use of other segments of the same parcel, a taking may not result.

Paul G. Summers
Attorney General

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 8.25%.

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

Kevin P. Lavender

THE 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 September 2004 is 9.24 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 5.24 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

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 previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-01	July 1 2004	1240 Human Services Family Assistance	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50</i> <i>Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson Assistant General Counsel Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	July 1 2004 through Dec 13 2004
07-02	July 1 2004	1200 Health Bureau of Health Services Administration Nutrition Services Section	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-15-2</i> <i>Special Supplemental Nutrition Program or Women Infants and Children</i> 1200-15-2-.01 Definitions 1200-15-2-.05 Voucher Transactions and Redemption 1200-15-2-.07 Vendor Agreements 1200-15-2-.08 Vendor Program Violations 1200-15-2-.10 Appeals and Administrative Reviews	Ernest Sykes Jr. Health OGC TN Twr 26th Fl 312 8th Ave N Nashville TN 37243 (615) 741-1611	Sept 14 2004
07-03	July 2 2004	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (79-676)	Robert L. Powell Division of Superfund 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Sept 15 2004
07-04	July 2 2004	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (40-511)	Robert L. Powell Division of Superfund 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Sept 15 2004
07-07	July 8 2004	1200 Health TN Medical Laboratory Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-6-1</i> <i>General Rules Governing Medical Laboratory Personnel</i> 1200-6-1-.15 Personnel Licensure Discipline Civil Penalties Assessment of Costs and Subpoenas 1200-6-1-.24 Qualifications and Duties of the Cytotechnologists <i>Chapter 1200-6-3</i> <i>General Rules Governing Medical Laboratories</i> 1200-6-3-.02 Licensure Procedures 1200-6-3-.05 Licensure Discipline Assessment of Costs and Subpoenas	Robert J. Kraemer OGC 26th Fl TN Twer 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Sept 21 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-08	July 8 2004	0030 Aging and Disability	Rulemaking Hearing Rules	New Rules	<i>Chapter 0030-1-6 Requirement to Verify Background Information for New Employees and Volunteers</i> 0030-1-6-.01 Purpose 0030-1-6-.02 Minimum Requirements 0030-1-6-.03 Reporting Prior Convictions 0030-1-6-.04 Checking Employment and Personal References 0030-1-6-.05 Requirements for Employees or Volunteers 0030-1-6-.06 Requirements for Employers 0030-1-6-.07 Criminal History Background Checks	Charles Hewgley Acting Executive Director 825 Andrew Jackson Bldg 500 Deaderick Str Nashville TN 37243-0860	Sept 26 2004
07-09	July 13 2004	0180 Financial Institutions Compliance Division	Proposed Rules	Amendments	<i>Chapter 0180-17 Rules Pertaining to Mortgage Lending Loan Servicing and Loan Brokering</i> 0180-17-.10 Fees.	Tracey E. Boyers Financial Institutions 4th FI Nashville City Ctr 511 Union St (615) 741-0346	Nov 26 2004
07-10	July 13 2004	0180 Financial Institutions Compliance Division	Proposed Rules	New Rule	<i>Chapter 0180-32 Rules Pertaining to Industrial Loan and Thrift Companies</i> 0180-32-.01 Substitute certificate of registration	Tracey E. Boyers 4th FI Nashville City Ctr 511 Union St Nashville TN 37219 615/741-0346	Nov 26 2004
07-12	July 16 2004	1680 Transportation Maintenance Division	Proposed Rules	Amendments	<i>Chapter 1680-3-1 Manual on Uniform Traffic Control Devices for Sts and Highways</i> 1680-3-1-.01 Applicability 1680-3-1-.02 Adoption of Manual on Uniform Traffic Control Devices Millennium Edition 1680-3-1-.03 Adoption of Future Revisions of Manual on Uniform Traffic Control Devices 1680-3-1-.04 Standard Highway Signs	John H. Reinbold Transportation Ste 300 James K. Polk Bldg 505 Deaderick St Nashville TN 37243-0326 (615) 741-2941	Nov 26, 2004
07-13	July 29 2004	0930 Military Department of TN	Proposed Rule	New Rules	<i>Chapter 0930-2 Rules for National Guard Tuition Assistance</i> 0930-2-1-.01 Purpose and Scope 0930-2-1-.02 Definitions 0930-2-1-.03 Subject to Funding Availability 0930-2-1-.04 Program Administration 0930-2-1-.05 Scope of Tuition Assistance Scholarships	Fred R. Denson General Counsel P.O. Box 41502 3041 Sidco Dr Nashville TN 37204-1502 (615) 313-0658	Nov 26, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-13, cont.					Scholarships 0930-2-1-.06 Eligibility 0930-2-1-.07 Cessation of Benefits 0930-2-1-.08 Restitution 0930-2-1-.09 Application Process 0930-2-1-.10 Priority of Funding 0930-2-1-.11 Oversight 0930-2-1-.12 Waiver of Rule		
07-16	July 16 2004	0080 Agriculture Animal Industries	Emergency Rules	New Rule	<i>Chapter 0080-2-1 Health Requirements For Admission And Transportation Of Livestock And Poultry</i> 0080-2-1-.17 Restrictions on Shipments From Known Vesicular Stomatitis States or Regions	Patricia Clark Agriculture P. O. Box 40627 Nashville TN 37204 615-837-5093	July 16 2004 through Dec 28, 2004
07-17	July 16 2004	0450 Professional Counselors Marital and Family Therapists and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	<i>Chapter 0450-1 General Rules Governing Professional Counselors</i> 0450-1-.01 Definitions 0450-1-.02 Scope of Practice 0450-1-.10 Supervision Post-Masters 0450-1-.12 Continuing Education <i>Chapter 0450-2 General Rules Governing Marital and Family Therapists</i> 0450-2-.12 Continuing Education <i>Chapter 0450-3 General Rules Governing Clinical Pastoral Therapists</i> 0450-3-.01 Definitions 0450-3-.03 Necessity of Certification 0450-3-.04 Qualifications for Certification 0450-3-.05 Procedures for Certification 0450-3-.06 Fees 0450-3-.07 Application Review Approval and Denial 0450-3-.08 Examination 0450-3-.09 Renewal of Certificate 0450-3-.11 Retirement and Reactivation of Certificate 0450-3-.12 Continuing Education 0450-3-.13 Professional Ethics 0450-3-.15 Disciplinary Actions and Civil Penalties	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 4, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-17, cont.					0450-3-.16 Duplicate Certificate 0450-3-.17 Change of Address and/or Name 0450-3-.19 Board Officers Consultants Records Complaints and Declaratory Orders		
07-18	July 21 2004	0940 Mental Health and Developmental Disabilities Office of Licensure	Proposed Rules	New rules and Repeals	<i>Chapter 0940-5-38 Minimum Program Requirements for Personal Support Services Agencies</i> 0940-5-38-.01 Definitions 0940-5-38-.02 Application 0940-5-38-.03 Scope 0940-5-38-.04 Policies and Procedures 0940-5-38-.05 Personnel Requirements 0940-5-38-.06 Standardized Training and Continuing Education Requirements 0940-5-38-.07 Service Recipient Record Requirements	Cynthia C. Tyler Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6520 Arthur L. Hyde Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6590	Nov 26, 2004
07-20	July 21 2004	1370 Communications Disorders and Sciences	Rulemaking Hearing Rules	Amendments	<i>Chapter 1370-1 Rules for Speech Pathology and Audiology</i> 1370-1-.03 Necessity of Licensure or Registration 1370-1-.05 Procedures for Licensure 1370-1-.06 Fees	Ernest Sykes Jr OGC 26th TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 4, 2004
07-21	July 21 2004	0460 Dentistry	Rulemaking Hearing Rules	Amendment	<i>Chapter 0460-1 General Rules</i> 0460-1-.03 Board Officers Consultants Records and Meetings <i>Chapter 0460-2 Rules Governing the Practice of Dentistry</i> 0460-2-.06 Specialty Certification <i>Chapter 0460-3 Rules Governing Practice of Dental Hygienists</i> 0460-3-.02 Criteria Approval Licensure Process (Reciprocity),	Ernest Sykes Jr OGC 26th TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 4, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-22	July 28 2004	0620/1200 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson Hamilton and Knox Counties	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 (615) 741-0145	Oct 11, 2004
07-23	July 28 2004	0620/1200 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 (615) 741-0145	Oct 11, 2004
07-24	July 28 2004	0620/1200 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-1 General Rules</i> 1200-13-1-.27 Home and Community Based Services Waiver for the Elderly and Disabled in Shelby County.	George Woods Bureau of TennCare 729 Church St Nashville TN 37247-6501 (615) 741-0145	Oct 11, 2004
07-25	July 26 2004	1360 State Business Services	Proposed Rules	Amendment	Chapter 1360-8 Uniform Commercial Code 1360-8-4-.05 Lapse Date and Time	Bob Grunow Director of Business Services Department of State William R. Snodgrass Twr 6th Fl 312 8th Ave N Nashville TN 37243 615-741-0584	Nov 26, 2004
07-26	July 27 2004	1340 Safety Division of Drr License Issuance	Proposed Rules	Amendment	<i>Chapter 1340-1-13 Rules of Classified and Commercial Drr Licenses and Certificates for Driving</i> 1340-1-13-.01 Purpose 1340-1-13-.02 Definitions 1340-1-13-.03 License Classifications 1340-1-13-.04 Endorsements 1340-1-13-.05 Instructional Permits 1360-1-13-.06 Photo Identification Licenses 1340-1-13-.08 General Eligibility Standards 1340-1-13-.09 Mental and Physical Standards 1340-1-13-.10 Vision Standards 1340-1-13-.11 Application Requirements 1340-1-13-.12 Proof of Date of Birth	Larry Large Director Drr License Issuance Department of Safety 1150 Foster Ave-McCord Hall Nashville TN 37249-1000 615-251-5217	Nov 26, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-26, cont.					Residency Lawful Permanent Residency and Identification 1340-1-13-.13 Licensing Minors 1340-1-13-.15 Examinations 1340-1-13-.16 Fraudulent Applications 1340-1-13-.17 Expirations and Renewal 1340-1-13-.18 Contents and Design of Licenses 1340-1-13-.19 Changes of Information Duplicates 1340-1-13-.20 Restrictions 1340-1-13-.21 Reinstatement After Cancellation Revocation Or Suspension		
07-27	July 29, 2004	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-8 Rules and Regulations of Hunts</i> 1660-1-8-.03 Permit Requirements – Wildlife Management Areas and Refuges	Sheryl Holtam Staff Attorney TN Wildlife Resources Agency P.O. Box 40747 Nashville TN 37204 (615) 781-6606	Oct 12, 2004
07-28	July 29 2004	1400 TN Corrections Institute	Proposed Rules		<i>Chapter 1400-1 Minimum Standards for Local Correctional Facilities</i> 1400-1-.02 Basic Information 1400-1-.03 Glossary 1400-1-.04 Physical Plant 1400-1-.05 Administration/Management	Steven E. Elkins 600 Charlotte Ave Nashville TN 37243 615-253-7736	Nov 26, 2004
07-31	July 30 2004	1200 Health Bureau of Health Services Administration Communicable and Environmental Disease Services	Proposed Rules	Amendments	<i>Chapter 1200-14-1 Communicable Diseases</i> 1200-14-1-.02 Notifiable Diseases	Richard F. Russell Esq. Deputy General Counsel Office of General Counsel 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 26, 2004
07-34	July 30 2004	GOC 0120 Architectural and Engineering Examiners	Notice of Stay of Effective Date		Continuing Education Requirements Proposed Amendments to subparagraph (c) of paragraph (2) of Rule 0120-5-.06 Types of Acceptable Continuing Education		New effective date: Oct 2, 2004

THE HOUSE AND SENATE GOVERNMENT OPERATIONS COMMITTEES**BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS - 0120****NOTICE OF STAY OF EFFECTIVE DATE**

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

Tennessee Department of Commerce and Insurance
Division of Regulatory Boards

State Board of Architectural and Engineering Examiners
Continuing Education Requirements
Proposed Amendments to subparagraph (c) of paragraph (2) of Rule 0120-5-.06
Types of Acceptable Continuing Education

The proposed amendments to Rule 0120-5-.06 were filed in the Office of Secretary of State on May 20, 2004 and were to become effective August 3, 2004.

The stay will begin the day this notice is received by your office.

Fred Standbrook
Legislative Attorney

The above notice was filed in the Department of State on the 30th day of July, 2004. (07-34)

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

Applications will be heard at the September 22, 2004 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 July 1, 2004. 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), 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 for the applicant no later than fifteen (15) days before the agency meeting at which the application is originally scheduled for consideration.

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

NAME AND ADDRESS**DESCRIPTION**

CONSENT CALENDAR to be heard 8/25/04
Memphis Gastroenterology Endoscopy Center East
8000 Wolf River Boulevard, Suite 200
Germantown (Shelby County), TN 38138
CN0406-059
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

The relocation of a previously approved but unimplemented Certificate of Need for an ambulatory surgical treatment center from 6029 Walnut Grove Road, Suite 200, Memphis, Tennessee 38120 as approved in CN0309-078A to 8000 Wolf River Boulevard, Suite 200, Germantown, TN 38138. This project also includes an expansion from four (4) to six (6) procedure rooms at a cost of \$5,109,215 (of which \$2,269,325 is the actual capital cost, the balance representing the market value of existing equipment and leased space used in the project). The facility will be located within the private practice office of Memphis Gastroenterology Group and will be limited to endoscopy outpatients of that group. The procedure rooms and clinical areas will occupy approximately 9,500 SF of space and an additional 2,750 SF of support space adjoining the private practice office will be shared.
\$ 5,109,215.00

NAME AND ADDRESS**DESCRIPTION**

Adventa Hospice, Inc.
 5959 Shallowford Road, Building 500A, Suite 505
 South Pittsburg (Marion County), TN 37421
 CN0404-031
 Contact Person: Kathy Bingham, Regulatory and
 Compliance Coordinator
 Phone No. 865-292-6553

The addition of Bedford, Coffee, Lincoln, and Moore counties to the licensed service area of Adventa Hospice, Inc. located at 5959 Shallowford Road, Building 500A, Suite 505, Chattanooga, TN. The service area currently includes the following counties: Franklin, Warren, Grundy, Marion, Van Buren, Sequatchie, Hamilton, Bledsoe, Rhea, Meigs, McMinn, Bradley and Polk. Adventa Hospice, Inc. intends to serve Bedford, Coffee, Lincoln and Moore counties from its South Pittsburg hospice multiple site office. The location of the existing parent office in Hamilton County will not change as a result of the project. Major medical equipment is not required as part of this business, nor will the number of beds be affected by this request.
 \$ 3,000.00

Tri-Cities Skin & Cancer
 1009 N State of Franklin Access Rd., Suite B
 Johnson City (Washington County), TN 37604
 CN0405-042
 Contact Person: Jenny Benton, Practice Administrator
 Phone No. 423-919-7546

The establishment of an ambulatory surgical treatment center (ASTC) for the performance of Mohs micrographic surgery and associated wound reconstruction limited to the use by the physicians and patients of Tri-Cities Skin and Cancer in the normal course of treatment. The facility will be located at 1009 N State of Franklin Access Rd., Johnson City, TN 37604. No beds will be required.
 \$ 412,492.02

NHC HealthCare, Sparta
 Highway 111 and Fred Hill Road
 Sparta (White County), TN
 CN0406-051
 Contact Person: Bruce K. Duncan,
 Asst. Vice-President, Planning/Licensure
 Phone No. 615-890-2020

The construction of a nursing home replacement facility at the northeast quadrant of the intersection of Highway 111 and Fred Hill Road in White County. The center will include one hundred twenty (120) nursing home beds and will be certified for Medicare and Medicaid participation.
 \$8,608,500.00

Vanderbilt University Hospital
 1771 Madison Street
 Montgomery (Clarksville County), TN 37043
 CN0406-052
 Contact Person: Ronald W. Hill, Vice President,
 Strategic Development
 Phone No. 615-936-6012

The addition of the twelve (12) neonatal intensive care unit (NICU) beds to the license of Vanderbilt University Hospital (VUH) in Nashville (Davidson County), Tennessee and the subsequent delicensure of twelve (12) NICU beds from the Gateway Medical Center in Clarksville (Montgomery County), Tennessee. No beds will be physically relocated. VUH will operate the unit in space leased from Gateway Medical Center. Thus, the responsibility for the unit will reside with VUH while Gateway Medical Center will serve as landlord. The service area for the project is Montgomery, Houston, and Stewart Counties in Tennessee and Christian and Todd Counties in Kentucky. The project does not include any major medical equipment.
 \$ 776,646.00

NAME AND ADDRESS**DESCRIPTION**

NorthCrest Medical Center
 100 NorthCrest Drive
 Springfield (Robertson County), TN 37172
 CN0406-053
 Contact Person: Kim Harvey Looney, Esq.
 Phone No. 615-259-1478

The acquisition of an additional magnetic resonance imaging (MRI) unit for a total complement of two (2) stationary MRI units operated under the hospital licensure. The new 1.5 Tesla MRI unit and some of the hospital's existing diagnostic equipment, including CT, mammography, X-Ray, Ultrasound, and bone desitometry equipment will be operated on the ground floor of a medical office building under development on the hospital campus at 100 NorthCrest Drive in Springfield (Robertson County), TN 37172. The existing MRI unit will remain in operation in the main hospital building. NorthCrest Medical Center has a management agreement with HCA. No beds are affected as a result of this proposal.
 \$ 3,438,437.12

Indian Path Medical Center
 2323 Pavillion Drive, Suite 100
 Kingsport (Sullivan County), TN 37660
 CN0406-054
 Contact Person: Tony Benton, Director of Strategic Planning
 Phone No. 423-431-6824

The establishment of an outpatient diagnostic center (ODC) and the initiation of magnetic resonance imaging services at 2323 Pavillion Drive, Suite 100, Kingsport, TN 37660. If the companion project for Appalachian Orthopaedic Associates, P.C., CN0406-055 is approved, Mountain States Health Alliance will enter into a lease agreement that allows Indian Path Medical Center to use equipment, space and staff on a part-time basis for the provision of MRI services operated under existing hospital licensure. The estimated project cost is \$1,840,400 which represents the aggregate expense of the initial (five-year) term of the lease agreement with Appalachian Orthopaedic Associates, P.C.
 \$ 1,840,400.00

Appalachian Orthopaedic Associates, P.C.
 2323 Pavillion Drive, Suite 100
 Kingsport (Sullivan County), TN 37660
 CN0406-055
 Contact Person: Sandra J. Wells, Office Manager
 Phone No. 423-245-3161

The initiation of magnetic resonance imaging services limited to the physician practice at 2323 Pavillion Drive, Suite 100, Kingsport, Tennessee, 37660. If the project is approved, Appalachian Orthopaedic Associates, P.C. intends to lease equipment, space and staff to Indian Path Medical Center, CN0406-054, on a part-time basis. The estimated project cost represents the aggregate expense for a five (5) year equipment lease and ten (10) year property lease. Other than the MRI the project does not contain any major medical equipment and does not initiate or discontinue other health services. No inpatient beds are requested in this application.
 \$ 1,938,362.00

NAME AND ADDRESS	DESCRIPTION
<p>Tri-Cities Surgery Center Renaissance Park, Bristol West Boulevard Bristol (Sullivan County), TN 37620 CN0406-056 Contact Person: Jerry W. Taylor, Esq. Phone No. 615-726-1200</p>	<p>The establishment of an ambulatory surgical treatment center (ASTC) to be located at Renaissance Park, Bristol West Boulevard, Bristol, Tennessee 37620. The ASTC will have two (2) operating rooms and one (1) treatment room. \$ 3,495,000.00</p>
<p>BioImaging at Charlotte, Inc. 5190 Park Avenue Memphis (Shelby County), TN 38119 CN0406-057 Contact Person: E. Graham Baker, Jr., Esq. Phone No. 615-383-3332</p>	<p>The establishment of an outpatient diagnostic center (ODC) and the initiation of magnetic resonance imaging (MRI) services. The establishment of this ODC will be effected by the purchase of the existing Park Avenue Imaging Center at 5190 Park Avenue, Memphis, TN 38119, including two (2) MRI units, one (1) computerized tomography (CT) unit, and related imaging equipment. The Park Avenue Imaging Center is currently being operated under a private practice exemption, therefore, the approval of this ODC will not result in the addition of new MRI units in the service area. The only major medical equipment involved is for MRI services. No other health services will be initiated or discontinued. \$ 4,684,219.84</p>
<p>Sumner Regional Medical Center 555 Hartsville Pike Gallatin (Sumner County), TN 37066 CN0406-058 Contact Person: John Wellborn, Consultant Phone No. 615-665-2022</p>	<p>The initiation of mobile positron emission tomography (PET) services to be operated on the hospital campus one day per month under the hospital licensure. The service will be provided by a mobile vendor docking at the hospital's mobile services pad on the campus. The hospital will remain licensed as a 145 bed general hospital. The project does not contain any major medical equipment or initiate or discontinue any other health service; and it will not affect the hospital's licensed bed complements. \$ 91,500.00</p>

**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800
DIVISION OF BOILER AND ELEVATOR INSPECTION
ELEVATOR SAFETY BOARD**

CORRECTION

Typographical errors appeared on page 11 of the July 15, 2004 T.A.R (Volume 30, Number 7) in regard to the proposed rule filed by the Department of Labor (05-05). The effective date should have been September 28, 2004.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Regulatory Services - Emergency rules stopping the movement of certain varieties of nursery stock into the state of Tennessee which are derived from the state of California, chapter 0080-6-1 Rules and Regulations Governing Nurseries Dealers and Agents, 4 T.A.R. (April 2004) - Filed March 25, 2004; effective September 6, 2004 (03-08)
- 1200 - Department of Health - Bureau of Health Services Administration - Communicable and Environmental Disease Services - Emergency rules covering reporting of diseases to public health authorities, chapter 1200-14-1, Communicable Diseases, 6 T.A.R. (June 2004) - Filed May 26, 2004; effective through November 7, 2004. (05-23)

THE DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF ANIMAL INDUSTRIES

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

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to Tenn. Code Ann. §4-5-208, the Tennessee Department of Agriculture is promulgating emergency rules in response to the threat of Vesicular Stomatitis introduction into the State of Tennessee.

The Tennessee Department of Agriculture, after research and communication with United States Department of Agriculture and its counterparts in other states, has determined that there is the potential for an immediate threat to animal health and the economic interests of Tennessee necessitating the implementation of the following emergency rules.

Vesicular Stomatitis has been confirmed in horses and cattle in portions of western Texas and southeastern New Mexico. Vesicular Stomatitis is a viral disease primarily affecting cattle, horses and swine and occasionally affects sheep and goats. Humans may also become infected if infected animals are handled. Affected livestock have blister-like lesions in the mouth, lips, nostrils, hooves and teats. As the blisters break, raw tissue is painful and may lead to loss of appetite and lameness. The disease causes significant economic loss to livestock producers and is of special concern because clinical signs are similar to foot and mouth disease. Owners and producers in states experiencing an outbreak of Vesicular Stomatitis are subjected to potentially devastating restrictions on sale and movement of their livestock. Additionally, if the disease spreads exports of U.S. livestock in world markets will be severely impacted.

In order to protect Tennessee livestock from the incursion of this disease and to participate with other states in curtailing the spread of the disease into other parts of the country, the following emergency measures are being imposed upon all hoofed animals entering Tennessee from states having confirmed cases of Vesicular Stomatitis.

For copies of the text of the emergency rule, contact: Dr. Ronald B. Wilson, State Veterinarian, Department of Agriculture, P. O. Box 40627, Nashville, Tennessee, 37204, 615-837-5120.

Ronald B. Wilson, D.V.M.
State Veterinarian

**EMERGENCY RULES
OF THE
THE DEPARTMENT OF AGRICULTURE - 0080
DIVISION OF ANIMAL INDUSTRIES**

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

TABLE OF CONTENTS

0080-2-1-.17 Restrictions on Shipments From Known Vesicular Stomatitis States or Regions

NEW RULE

0080-2-1-.17 RESTRICTIONS ON SHIPMENTS FROM KNOWN VESICULAR STOMATITIS STATES OR REGIONS

- (1) Importation of livestock from a known vesicular stomatitis state or region as designated by the United States Department of Agriculture shall be restricted as follows:
 - (a) No hoofed livestock may enter Tennessee if vesicular stomatitis has been diagnosed within ten (10) miles of the premise of origin since January 1, 2004.
 - (b) All hoofed livestock originating from a location greater than ten (10) miles, but less than one hundred (100 miles), from a premise where vesicular stomatitis has been diagnosed since January 1, 2004, are subject to the following requirements:
 1. Livestock for shipment shall be examined by an accredited veterinarian to determine that they are free from vesicular stomatitis and shall be accompanied by a Certificate of Veterinary Inspection with the following written statement signed by that accredited veterinarian:

“All animals identified on this Certificate of Veterinary Inspection have been examined and found to be free from vesicular stomatitis. During the past 30 days, these animals have neither been exposed to vesicular stomatitis nor located within ten (10) miles of a premise where vesicular stomatitis has been diagnosed.”

2. Evidence of a negative test for vesicular stomatitis conducted within ten (10) days of shipment is required.
3. An entry permit number must be obtained from the Tennessee Department of Agriculture by calling 615/837-5120 during normal working hours and must be recorded on the Certificate of Veterinary Inspection for each livestock shipment.
4. All livestock meeting these requirements will be quarantined upon entry into Tennessee for at least fourteen (14) days, and then inspected by an accredited veterinarian and found to be free of disease prior to release from the quarantine.

Authority: T.C.A. . §§ 44-2-102 and 4-3-203.

The emergency rules set out herein were properly filed in the Department of State 16th day of July, 2004, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 28th day of December, 2004. (07-16)

(blank)

PROPOSED RULES

THE TENNESSEE CORRECTIONS INSTITUTE - 1400

CHAPTER 1400-1

MINIMUM STANDARDS FOR LOCAL CORRECTIONAL FACILITIES

Presented herein are proposed amendments to the Minimum Standards for Local Correctional Facilities of the Tennessee Corrections Institute submitted pursuant to T.C.A. §4—5—202 in lieu of a rulemaking hearing. It is the intent of the Institute to promulgate these Rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Tennessee Corrections Institute, 8th Floor of the Andrew Jackson Building, located at 500 Deaderick Street, Nashville TN and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: C. David Hensley, 500 Deaderick Street, 8th Floor, Tennessee Corrections Institute, 615-741-3816.

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (b) of Paragraph (4) of Rule 1400-1-.02 (Basic Information) is amended by deleting the language “November, 1982,” and substituting instead the language “June, 2000,” and is further amended by deleting the language “constructed prior to that date” and substituting instead the language “constructed prior to or during the month of June, 2000” so the rule shall read:

- (b) Detention facilities shall be classified according to construction date. Facilities constructed after June, 2000, shall be considered as new, while facilities constructed prior to or during the month of June, 2000, shall be considered existing facilities.”

Paragraph (26) of Rule 1400-1-.03 (Glossary) is amended by deleting the word “Jails” and substituting instead the word “Facilities” and is further amended by deleting the language “November, 1982” and substituting instead the language “or during the month of June, 2000” so the rule shall read:

- (26) Existing Facilities – Facilities built prior to or during the month of June, 2000.”

Paragraph (42) of Rule 1400-1-.03 (Glossary) is amended by deleting the word “Jails” and substituting instead the word “Facilities” so the rule shall read:

- (42) New Facilities – Facilities built after June, 2000.”

Paragraph (53) of Rule 1400-1-.03 (Glossary) is amended by adding the following language as a new paragraph (53) and by renumbering current paragraph (53) and subsequent paragraphs accordingly: “Regular Access – The documented number of hours a prisoner may utilize additional living space available as described by facility policy.” so the rule shall read:

- (53) Regular Access – The documented number of hours a prisoner may utilize additional living space available as described by facility policy.”

Paragraph (2) of Rule 1400-1-.04 (Physical Plant) is amended in the last sentence by deleting the language “in an existing facility” and substituting instead the language “in either an existing or a new facility” so the rule shall read:

- (2) For new facilities, the minimum size of a single-occupancy cell shall have fifty (50) square feet of clear floor space with a ceiling height of not less than eight (8) feet. All dimensions of cell length and width for both single and multiple-occupancy cells shall allow for a reasonable amount of usable floor space for any in-cell activities of inmates. Any questions pertaining to sufficiency of cell dimensions shall be decided by the Corrections Institute. Each cell shall contain a bunk, watercloset and lavatory. For existing facilities, the minimum size of a single-occupancy cell shall be forty-five (45) square feet with a ceiling height of at least eight (8) feet. Each single cell in an existing facility shall contain a bunk, water closet and lavatory. If a prisoner who occupies a single-occupancy cell in either an existing or a new facility has regular access to additional living areas outside the cell, this additional area may be added on a pro rata basis to the square footage available to the prisoner.”

Paragraph (3) of Rule 1400-1-.04 (Physical Plant) is amended by deleting in the last sentence the language “in an existing facility” and substituting instead the language “in either an existing or a new facility” so the rule shall read:

- (3) Multiple-occupancy cells in new facilities shall not be designed to accommodate more than sixteen (16) persons. A minimum of forty (40) square feet of clear floor space for each occupant must be provided in the sleeping areas, with a ceiling elevation of not less than eight (8) feet. In existing facilities, multiple-occupancy cells shall allow twenty-five (25) square feet of floor space per occupant, exclusive of the floor area occupied by the bunks, with a ceiling height of not less than eight (8) feet. If a prisoner who occupies a multiple-occupancy cell in either an existing or a new facility has regular access to additional living areas, the additional area may be added on a pro rata basis to the square footage available to a prisoner.”

Paragraph (4) of Rule 1400-1-.04 (Physical Plant) is amended by adding in the first sentence the language “jails and” between the words “new” and “workhouses” and is further amended by deleting in the last sentence the language “in an existing facility” and substituting instead the language “in either an existing or a new facility” so the rule shall read:

- (4) In new jails and workhouses, dormitories shall not be designed to accommodate more than sixty-four (64) persons. A minimum of twenty-five (25) square feet of clear floor space for each occupant must be provided in the housing area with a ceiling elevation of not less than eight (8) feet. This type of housing shall be used only for minimum security prisoners.

In existing jails and workhouses, dormitories shall provide twenty-five (25) square feet of floor space per occupant, exclusive of the area occupied by the bunks, and a ceiling height of not less than eight (8) feet. If a prisoner who occupies a dormitory in either an existing or a new facility has regular access to additional living areas, the additional area may be added on a pro rata basis to the square footage available to a prisoner.”

Rule 1400-1-.05 (Administration/Management) is amended by adding the following new language as a new paragraph (9):

“Each facility relying on regular access to additional living space to comply with minimum cell size requirements under Rule 1400—1-.04 shall maintain a written policy regarding the number of hours of access to additional living space outside an inmate’s cell that inmates will be allowed. This policy should take into consideration any relevant factors regarding inmates, including but not limited to inmate classifications. Records shall be maintained on the number of hours per day inmates have access to additional living areas in such facilities.”

Paragraph (2) of Rule 1400-1-.05 (Administration/Management) is amended by deleting the language “reviewed and updated annually” and by substituting instead the language “reviewed at least annually and updated as needed” and is further amended in the third sentence of the paragraph by adding the language “approved by the sheriff, chief, or warden and shall be” between the language “shall be” and the language “made available” so the new paragraph reads:

- (2) Each jail shall have written policies and procedures governing the facility’s operations. They shall be reviewed at least annually and updated as needed. These policies and procedures shall be approved by the sheriff, chief, or warden and shall be made available to all employees.

Authority: T.C.A. §41-4-140.

The proposed rules set out herein were properly filed in the Department of State on the 29th day of July, 2004, 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 26th day of November, 2004. (07-28)

**THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180
COMPLIANCE DIVISION**

**CHAPTER 0180-17
RULES PERTAINING TO MORTGAGE LENDING,
LOAN SERVICING AND LOAN BROKERING**

Presented herein is a proposed amendment of the Department of Financial Institutions submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the office of the Department of Financial Institutions, Fourth Floor, of the Nashville City Center, located at 511 Union Street, Nashville, Tennessee and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed amendment, contact: Tracey E. Boyers, Attorney, Department of Financial Institutions, 511 Union Street, 4th Floor, Nashville City Center, Nashville, Tennessee, (615) 741-0346.

The text of the proposed amendments is as follows:

AMENDMENTS

The Table of Contents, Section 0180-17-.10 is amended by deleting the title in its entirety and substituting instead the following language so that, as amended, the title shall read:

0180-17-.10 FEES.

Rule 0180-17-.10 is further amended by deleting the rule in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (1) The commissioner hereby prescribes the following fees.
 - (a) Registration statement. Each registrant filing a registration statement pursuant to T.C.A. § 45-13-103(b)(1), shall pay to the commissioner, at the time of filing such registration statement, a non-refundable registration fee of one hundred dollars (\$100) and a non-refundable investigation

fee of one hundred dollars (\$100). Each registrant shall file a renewal application and pay a renewal fee of one hundred dollars (\$100) to the commissioner on or before December 1 of each year for the following year's registration commencing on January 1. Should the registrant fail to file the renewal application and renewal fee by December 1, the registrant will have to file an application for registration together with the one hundred dollar (\$100) registration fee and the one hundred dollar (\$100) investigation fee to obtain the renewed registration.

(b) Fees for registration of each mortgage loan originator.

1. Initial registration \$100.00
2. Annual renewal of registration \$100.00
3. Fee for obtaining substitute license, certificate of registration, or mortgage loan originator registration certificate \$25.00

(2) Fees paid to the commissioner are non-refundable.

Authority: T.C.A. §§ 45-1-107(h), 45-13-105(c)(2), 45-13-117, 45-13-119; and Chapter 747 of Acts of 2004.

The proposed rules set out herein were properly filed in the Department of State on the 13th day of July, 2004, 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 26th day of November, 2004. (07-09)

**THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180
COMPLIANCE DIVISION**

**CHAPTER 0180-32
RULES PERTAINING TO INDUSTRIAL LOAN AND THRIFT COMPANIES**

Presented herein are proposed rules of the Department of Financial Institutions submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in Department of Financial Institutions, 4th Floor, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219 and in the Department of State, Eighth Floor, William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee 37243-0293, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed rules contact: Tracey E. Boyers, Staff Attorney, Tennessee Department of Financial Institutions, 511 Union Street, 4th Floor, Nashville City Center, Nashville, Tennessee, 37219, (615) 741-0346.

NEW RULE

TABLE OF CONTENTS

0180-32-.01 Substitute certificate of registration.

0180-32-.01 SUBSTITUTE CERTIFICATE OF REGISTRATION.

- (1) The commissioner hereby prescribes the following fee.
 - (a) Fee for obtaining substitute certificate of registration \$25.00
- (2) Fee for obtaining substitute certificate of registration is non-refundable.

Authority: *T.C.A. §45-1-107(h) and Chapter 747 of Acts of 2004.*

The proposed rules set out herein were properly filed in the Department of State on the 13th day of July 2004, 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 26th day of November, 2004. (07-10)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES ADMINISTRATION
COMMUNICABLE AND ENVIRONMENTAL DISEASE SERVICES**

**CHAPTER 1200 14-1
COMMUNICABLE DISEASES**

Presented herein are proposed amendments of the Department of Health, Bureau of Health Services Administration, Communicable and Environmental Disease Services, 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, Communicable and Environmental Disease Services, 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 Office of Communicable and Environmental Disease Services 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 a copy of the text of the proposed amendments, contact: Timothy F. Jones, MD, Communicable and Environmental Disease Services, Fourth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247 3901, (615) 741-7247.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), is amended by inserting a new subparagraph (t) and renumbering the existing subparagraph (t), Haemophilus Influenzae Invasive Disease, as (u), and further renumbering subsequent subparagraphs accordingly. New subparagraph (t) shall read as follows:

- (t) Guillain-Barre Syndrome

Authority: *T.C.A. §§ 4-5-202 and 68-5-104(a).*

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), is amended by deleting the existing language contained in subparagraph (xx) and substituting instead the following language in an appropriately numbered subparagraph:

- () Staphylococcus aureus
 - 1. Methicillin resistant Invasive Disease
 - 2. Vancomycin non-sensitive – all forms
 - 3. Staphylococcal Enterotoxin B Pulmonary Poisoning**

Authority: T.C.A. §§ 4-5-202 and 68-5-104(a).

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), is amended by deleting the existing language contained in subparagraph (fff) and substituting instead the following language in an appropriately numbered subparagraph:

- () Vancomycin Resistant Enterococci (VRE) Invasive Disease

Authority: T.C.A. §§ 4-5-202 and 68-5-104(a).

The proposed rules set out herein were properly filed in the Department of State on the 30th day of July, 2004, 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 26th day of November, 2004. (07-31)

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

CHAPTER 0940-5-38

MINIMUM PROGRAM REQUIREMENTS FOR PERSONAL SUPPORT SERVICES AGENCIES

The Tennessee Department of Mental Health and Developmental Disabilities submitted pursuant to T.C.A. §4-5-202 in lieu of rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Department's Office of Legal Counsel, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, and 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 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 these proposed rules, contact: Ann Marie Dixon, Office of Licensure, Tennessee Department of Mental Health and Developmental Disabilities, 5th Floor, Cordell Hull Building 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6590.

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0940-5-38-.01	Definitions	0940-5-38-.05	Personnel Requirements
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0940-5-38-.03	Scope		
0940-5-38-.04	Policies and Procedures	0940-5-38-.07	Service Recipient Record Requirements

0940-5-38-.01 DEFINITIONS FOR THE DISTINCT CATEGORY OF PERSONAL SUPPORT SERVICES AGENCIES

- (1) “Agency” means a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership providing personal support services as defined below. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (2) “Chronic condition” means a mental and/or physical impairment that is expected to last indefinitely.
- (3) “Service recipient” means an individual who, because of a chronic condition, has substantial limitations in two or more major life activities, and who is receiving services in either a regular or temporary residence.
- (4) “Education services” means consultation provided by a licensed nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (5) “Personal support services” means one or more of the following services provided to a service recipient in the individual’s regular or temporary residence, in addition to assistance with major life activities.

Personal support services include but are not limited to:

- (a) Self-care assistance with tasks such as eating, dressing, toileting, bathing, mobility, transfer assistance and other services and supports to maintain health and wellness;
 - (b) Household assistance with tasks such as housekeeping, laundry, meal planning, meal preparation, shopping, bill paying, and use of telecommunication devices;
 - (c) Personal assistance to access community activities such as transportation, social, recreational or other personal activities; and
 - (d) Education services.
- (6) “Major life activities” means
- (a) self-care;
 - (b) receptive and expressive language;
 - (c) learning;
 - (d) mobility;
 - (e) self-direction;
 - (f) capacity for independent living; or
 - (g) economic self-sufficiency.

0940-5-38-.02 APPLICATION OF RULES FOR PERSONAL SUPPORT SERVICES AGENCIES

- (1) The licensee providing personal support services must comply with and provide services that comply with the following rules:

- (a) Chapter 0940-5-6 Minimum program requirements for all facilities;
- (b) Chapter 0940-5-38 Minimum program requirements for personal support services agencies; and
- (c) Regardless of whether a licensee is a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership, it must meet all requirements of chapters 0940-5-6, and 0940-5-38.

0940-5-38-.03 SCOPE.

- (1) These rules apply to all agencies providing one or more personal support services in the regular or temporary residence of service recipients who have substantial limitations in two or more major life activities. The following are exempt from licensure under this chapter:
 - (a) A person who provides personal support services to only one individual;
 - (b) A person who provides personal support services only to members of the individual's own family;
 - (c) A person who provides only household services to a service recipient and no other assistance with major life activities;
 - (d) A person who provides services in homeless shelters;
 - (e) A person who provides only delivery services, such as dry-cleaning, food, medication delivery, or medical equipment; and
 - (f) Home care organizations licensed under Tennessee Code Annotated, Title 68, Chapter 11, Part 2 as a home care organization, which provides personal support services; and
 - (g) Chore services as defined by the Tennessee Commission on Aging and Disability.

0940-5-38-.04 POLICIES AND PROCEDURES.

- (1) The licensee must maintain written policies and procedures that include the following:
 - (a) Requirements that each employee or contract worker comply with procedures for detection and prevention of communicable diseases according to procedures of the Tennessee Department of Health;
 - (b) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
 - (c) Receipt and disbursement of money on behalf of service recipients;
 - (d) Backup plan for staffing; and
 - (e) Consultation for any service.

0940-5-38-.05 PERSONNEL REQUIREMENTS.

- (1) The licensee must:
 - (a) Ensure that individuals who provide personal support services practice infection control procedures and universal precautions that will protect the service recipient from infectious diseases.
 - (b) Have proof of liability insurance coverage for the agency and others who provide personal support services.
 - (c) Have proof of compliance with Tennessee employment and labor laws and regulations.
 - (d) Perform criminal background checks on each individual who provides personal support services within ten (10) days of employment.
 - (e) Check the Tennessee Elderly or Vulnerable Abuse Registry and the Tennessee Sexual Offender Registry for entry of any individual before he or she provides personal support service to a service recipient.
 - (f) Ensure that individuals providing personal support services demonstrate the following prior to providing personal support services to service recipients:
 1. Have language skills sufficient to read and understand instructions, prepare and maintain written reports and records;
 2. Have language skills sufficient to communicate with the service recipient; and
 3. Have documented training specific to meeting individual service recipient needs in the areas of self-care, household management and community living, and methodologies for service delivery.
 - (g) Ensure that individuals providing personal support services have access to consultation for any service provided under this chapter;
 - (h) Evaluate, at least annually, the ability of individuals providing personal support services to provide daily supports to service recipients; and
 - (i) Provide at least semi-annual documentation that the service recipient is satisfied with the quality of services provided.

0940-5-38-.06 STANDARDIZED TRAINING AND CONTINUING EDUCATION REQUIREMENTS.

- (1) The licensee must ensure that:
 - (a) Individuals who provide personal support services demonstrate basic competency in the following skill/knowledge areas within the first 30 days of employment/contract:
 1. Observing, reporting and documenting changes in service recipient's daily living skills;
 2. Abuse and neglect detection, reporting and prevention;
 3. Service recipient rights;
 4. Universal health precautions, including infection control;

5. How to assist service recipients with personal hygiene;
 6. Service recipient safety; and
 7. Procedures to be followed in the event of an emergency or disaster that at least includes emergency transportation, emergency medical care and staff coverage in such events.
- (b) Individuals who provide personal support services receive training on job related topics at least annually.

0940-5-38-.07 SERVICE RECIPIENT RECORD REQUIREMENTS.

- (1) The licensee must ensure that each service recipient's record includes the following information:
- (a) An assessment of the need for a specific personal support service to be provided;
 - (b) A written service plan based on a needs assessment which indicates, type, frequency, duration, and amount of services to be provided;
 - (c) Consent for services by the service recipient or conservator, parent, guardian or legal custodian, or attorney-in-fact under a durable power of attorney (DPOA) for health care, when applicable;
 - (d) Address and methods to reach the service recipient's conservator, parent, guardian or legal custodian, surrogate decision maker under T.C.A. §§33-3-219 and 3-220, or attorney-in-fact under a durable power of attorney (DPOA) for health care;
 - (e) Documentation of party responsible for payment of services;
 - (f) A record of services actually delivered with dates and times documented;
 - (g) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services; and
 - (h) Documentation of all funds received and disbursed on behalf of the service recipient.

REPEALS

Rule 0940-5-36-.01 is repealed.
 Rule 0940-5-36-.02 is repealed
 Rule 0940-5-36-.03 is repealed.
 Rule 0940-5-36-.04 is repealed
 Rule 0940-5-36-.05 is repealed
 Rule 0940-5-36-.06 is repealed.
 Rule 0940-5-36-.07 is repealed

Authority: T. C. A. §§4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302

The proposed rules set out herein were properly filed in the Department of State on the 21st day of July, 2004. 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 26th day of November, 2004. (07-18)

THE MILITARY DEPARTMENT OF TENNESSEE - 0930

**CHAPTER 0930-2
RULES FOR NATIONAL GUARD TUITION ASSISTANCE**

Presented herein are proposed rules of the Military Department of Tennessee submitted pursuant to T.C.A. § 4 - 5 - 202 in lieu of a rulemaking hearing. It is the intent of the Military Department of Tennessee to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in room number 1000 of Houston Barracks located at 3041 Sidco Drive, Nashville, Tennessee and in the Department of State, Eighth Floor, TN Tower William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Fred R. Denson, General Counsel, Tennessee Military Department, 3041 Sidco Drive, Nashville, TN 37204-1502, Telephone (615) 313-0658.

The text of the proposed rules is as follows:

NEW RULES

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0930-2-1-.01	Purpose and Scope	0930-2-1-.07	Cessation of Benefits
0930-2-1-.02	Definitions	0930-2-1-.08	Restitution
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0930-2-1-.04	Program Administration	0930-2-1-.10	Priority of Funding
0930-2-1-.05	Scope of Tuition Assistance Scholarships	0930-2-1-.11	Oversight
0930-2-1-.06	Eligibility	0930-2-1-.12	Waiver of Rule

0930-2-1-.01 PURPOSE AND SCOPE.

- (1) To establish the policy, effective 1 July 2004, to be used for administering the Tennessee National Guard Tuition Assistance Scholarship Program [hereinafter called the "Program"]. The Program is managed under the guidance of the Adjutant General on a fair and equitable basis with limited funds appropriated annually by the state Legislature. The purpose of the program is to recruit and retain members of the Tennessee National Guard [hereinafter called the "TNG"].

0930-2-1-.02 DEFINITIONS.

- (1) The following terms shall have the meanings set forth in the rule:
 - (a) Educational Institution. Any accredited state supported university, community college, or vocational or technical school or any private college or any university located within the State of Tennessee.
 - (b) Program. The Tennessee National Guard Tuition Assistance Scholarship Fund administered by the Adjutant General of Tennessee.
 - (c) STAAB. State Tuition Assistance Advisory Board.
 - (d) The office of the J1. The office of primary responsibility for the program, the Director of Human Resources.

- (e) Tuition. The cost of instruction delineated in a catalog of an educational institution for a semester, quarter, or classroom hour.
- (f) TNG. Tennessee National Guard.
- (g) Unsatisfactory Participant. A member of the TNG who has accumulated nine (9) or more unexcused absences from unit training assemblies within a twelve (12) month period, or who, without proper authority, failed to attend or complete the entire period of annual training, or is otherwise barred from favorable personnel actions.

0930-2-1-.03 SUBJECT TO FUNDING AVAILABILITY

- (1) Meeting the eligibility criteria as outlined in Rule 0930-2-1-.06 does not obligate the TNG to award its scholarship. Tuition assistance scholarships can not be awarded if funds are depleted.

0930-2-1-.04 PROGRAM ADMINISTRATION

- (1) The Program will be administered by the Education Services Office [hereinafter called the “ESO” for Army] or Base Education and Training Manager [hereinafter called the “BETM” for Air].

0930-2-1-.05 SCOPE OF TUITION ASSISTANCE SCHOLARSHIPS

- (1) TNG members who meet the prerequisites in Rule 0930-2-1-.06 may receive a tuition assistance scholarship based upon available funds. Courses that are audited or are taken as “pass/fail” do not qualify and will not be approved for payment. Courses must be taken for academic credit or a certificate of completion. This program will provide funding for a course only once.
- (2) The Tuition Assistance Scholarship must be paid to an educational institution [not to the individual]. “Educational Institution” is defined as any accredited state-supported university, community college, or vocational or technical school or any private college or university located within the State of Tennessee.
- (3) Regardless of the state of residence, a member of the TNG who has met the eligibility requirements of these Rules and is attending a Tennessee educational institution, as defined above, qualifies for the same tuition assistance scholarship amount as an in-state resident. However, it will not be used for an increase in tuition due to out of state tuition costs.
- (4) In no case will the combination of this tuition assistance scholarship with any other tuition assistance program exceed 100% of the student’s tuition cost, and shall not exceed the amount of in-state tuition assistance the member would receive if the member were enrolled at a state supported institution.

Authority: Tennessee Public Chapter No. 477 of 2004

0930-2- L-.06 ELIGIBILITY. To qualify for a TNG tuition assistance scholarship pursuant to Rule 0930-2-1-.05, the TNG members must satisfy all the following conditions:

- (1) Be a member of the TNG on or before the first day of class for the semester, trimester, quarter, or term and have successfully completed basic military training or received a commission on or before the first day of class for the semester, trimester, quarter, or term.
- (2) Be a satisfactory participant in the TNG. An “unsatisfactory participant” is a member of the TNG who has accumulated nine (9) or more unexcused absences from unit training assemblies within a twelve (12) month period, or who, without proper authority, failed to attend or complete the entire period of annual training, or is otherwise barred from favorable personnel actions.

- (3) Must serve in the TNG beyond the end of the term for which the tuition assistance scholarship is granted.
- (4) The recipient must complete all courses in the semester for which benefits are received.

0930-2-1-.07 CESSATION OF BENEFITS. The tuition assistance scholarship will permanently cease upon the member meeting any of the following conditions:

- (1) Accumulation of 150 credit hours (semester), or the equivalent of the TNGs tuition assistance scholarship funding.
- (2) Unsatisfactory participation by the TNG member as defined in Rule 0930-2-1-.06.

0930-2-1-.08 RESTITUTION.

- (1) A TNG member shall repay the State of Tennessee the full tuition assistance scholarship amount received for each course during the preceding semester, trimester, quarter or term that :
 - (a) The member failed to complete with a passing grade the course or courses for which he/she received the scholarship within 60 days of the originally scheduled course end date.
 - (b) The member fails to produce grade report to the ESO/BETM within 60 days of the originally scheduled course end date.
 - (c) The member becomes an unsatisfactory participant with the TNG, as described in Rule 0930-2-1-.06.
- (2) The TNG member may retake the course at their own expense. A passing grade at that time will preclude the member from making restitution for the expense of the original course.
- (3) If the member does not fulfill the member's contractual obligation to the TNG as defined in Rule 0930-2-1-.06, the Adjutant General [or designee] shall notify the member in writing that the member is liable for restitution, and the member shall repay the State of Tennessee the full amount of the tuition assistance scholarship received during the last school year.
- (4) The member may appeal the requirement to make restitution pursuant to this paragraph if the member files a written notice of intent to appeal with the Adjutant General within 30 days notice that the member is liable for restitution. During the appeal process the requirement of restitution is postponed. If the Adjutant General determines that the matter meets the requirements for restitution, the Adjutant General shall inform the member of this determination. The member shall then make restitution within 60 days to the State of Tennessee for those courses for which the Adjutant General determines the member is liable. The decision of the Adjutant General is final and may not be appealed.

0930-2-1-.09 APPLICATION PROCESS.

- (1) Members of the TNG who meet the requirements of Rule 0930-2-1-.06 may apply using the "Tennessee National Guard Tuition Assistance Scholarship Application Form", in accordance with annual guidance from the Adjutant General. A member must apply for each semester, trimester, quarter, or term for which they intend to utilize the scholarship.
- (2) The member will forward the completed and signed application to their respective ESO/BETM. The ESO/BETM will review applications for eligibility, accuracy, completeness, and priority category before being forwarded to the State Tuition Assistance Advisory Board [hereinafter called the "STAAB"]. Incomplete or invalid forms will be returned without action.

- (3) Applications must be submitted to the ESO/BETM no later than the 10th day of the month prior to the class start month.
- (4) Approval authority may be granted by the Adjutant General to the J-1/STAAB President. After Board review, the form will be signed and forwarded to the state budget office for funds obligation and then returned to the ESO/BETM for distribution to the applicant. Applications declined will be returned to the ESO/BETM without action. All participants must file a degree plan with the ESO/BETM after accumulation of nine (9) semester hours at an institution. The degree plan will detail all required courses needed to fulfill degree requirements. If a student's degree goal has changed, a new degree plan must be filed. Courses that do not support the current degree plan will not be funded.

0930-2-1-.10 PRIORITY OF FUNDING. As with any program that has fiscal limitations, funding priorities should be clear and consistent with the intent of this program. The primary intent of this program is to recruit and retain members of the TNG. All reasonable efforts will be made to fulfill all eligible applications.

- (1) Priority 1. Members pursuing an undergraduate degree.
- (2) Priority 2 Members pursuing certification at a vocational/technical institution.
- (3) Priority 3. Members without a graduate degree who are pursuing a degree or those members who are pursuing a professional certification, i.e. teacher or principal certification, CPA, etc.

0930-2-1-.11 OVERSIGHT.

- (1) The office of primary responsibility is the office of the J-1.
- (2) For the purpose of rendering recommendations and guidance for this program, the Adjutant General will appoint a State Tuition Assistance Advisory Board to consist of the following members, with additional members appointed as necessary:
 - (a) J-1.
 - (b) Education Services Officer [Army].
 - (c) Military Personnel Management Officer [Air].
 - (d) Recruiting and Retention Manager [Army].
 - (e) Recruiting and Retention Superintendent [Air].
 - (f) Senior NCO/Officer from a Field Unit [Army].
 - (g) Senior NCO/Officer from a Field Unit [Air].
- (3) The STAAB will have voting privileges for the purpose of conducting Board business.
- (4) The STAAB will meet as required or at the call of the Adjutant General.

0930-2-1-.12 WAIVER OF RULE:

- (1) The Adjutant General can waive any rule contained in 0930-2-1 not required by statute when it is in the best interest of the State of Tennessee and the Tennessee National Guard.

Authority: *Tennessee Public Chapter No. 477 of 2004*

The proposed rules set out herein were properly filed in the Department of State on the 29th day of July, 2004, 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 26th day of November, 2004. (07-13)

**THE TENNESSEE DEPARTMENT OF SAFETY - 1340
DIVISION OF DRIVER LICENSE ISSUANCE**

**CHAPTER 1340-1-13
RULES OF CLASSIFIED AND COMMERCIAL DRIVER LICENSES AND CERTIFICATES FOR
DRIVING**

Presented herein are proposed amendments of the Department of Safety submitted pursuant to Tennessee Code Annotated, Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Safety to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department of Safety Legal Division, 1150 Foster Ave. Nashville, Tennessee 37249-1000, and in the Department of State, Publication Division, 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed amendments, contact: Deborah Martin, Staff Attorney, Tennessee Department of Safety, Legal Division, 1150 Foster Avenue, Nashville, TN 37249, 615-251-5296.

The text of the proposed amendments is:

SUMMARY

**CHAPTER 1340-1-13
RULES OF CLASSIFIED AND COMMERCIAL DRIVER LICENSES AND CERTIFICATES FOR
DRIVING**

For a copy of the entire text of this proposed rule, contact Deborah Martin, Department of Safety, 1150 Foster Avenue, Nashville, Tennessee 37249-1000 (615) 251-5296.

This rule has been amended in accordance with the law as amended by Public Chapter No. 778 so that only persons who are United States Citizens or lawful permanent residents of the United States and, also, a resident of Tennessee shall receive a driver license.

The law as amended by Public Chapter No. 778 also creates a "certificate for driving" for certain persons whose presence in the United States has been authorized by the federal government for a specific purpose and for a specified period of authorized stay and persons who are residents of Tennessee who meet certain identification requirements. Such persons may apply for a certificate for driving which shall serve to show that the persons passed the required driving examinations and understand the rules of the road. The certificate for driving shall be for driving purposes only and may not be used for identification.

The amendment also adds the certificate for driving to the procedures already in place for the issuance of driver licenses, restricted driver licenses, learner's permits and motorcycle licenses. Therefore, a person issued a certificate for driving must pass the driving test and vision tests, meet mental and physical standards and pay applicable fees for issuance and renewal thereof.

The certificate for driving will be issued for a minimum period of one year but not exceeding five years for persons with a document authorizing the person to be in the United States. If the person does not have such documentation, the certificate for driving will be issued for a period of one year. A certificate for driving may be renewed, but the person's documentation authorizing the person's stay must have been extended. If the person has no documentation authorizing the person to be in the United States, the certificate must be renewed on a yearly basis.

A person applying for a certificate for driving may be denied because of a fraudulent application. Also, a certificate for driving may be canceled, revoked or suspended for the same grounds that cause the cancellation, revocation or suspension of a driver license.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of July, 2004, 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 26th day of November, 2004. (07-26)

**THE TENNESSEE DEPARTMENT OF STATE - 1360
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-8
UNIFORM COMMERCIAL CODE**

Presented herein is a proposed amendment of a department rule submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the department to promulgate this rule without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendment is published. Such petition to be effective must be filed on the 6th Floor of the William R. Snodgrass Tower located at 312 Eighth Avenue North, Nashville, TN 37243, and in the Department of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed amendment, contact Bob Grunow, Director of Business Services, Department of State, William R. Snodgrass Tower, 6th Floor, 312 Eighth Avenue North, Nashville, TN 37243, and (615)-741-0584.

The text of the proposed amendment is as follows:

AMENDMENT

Rule 1360-8-4-.05, Lapse Date and Time, is amended by adding the following new paragraph:

- (2) Active financing statements filed prior to July 1, 2001, whose stated initial lapse (maturity) dates are beyond June 30, 2006, and whose debtors are not identified on the financing statements as transmitting utilities shall have their initial lapse (maturity) dates of record adjusted to June 30, 2006.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-515, 47-9-526, 47-9-705, Attorney General Opinion No. 04-102.

The proposed rules set out herein were properly filed in the Department of State on the 26th day of July, 2004, 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 26th day of November, 2004. (07-25)

**THE TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680
MAINTENANCE DIVISION**

CHAPTER 1680-3-1

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS

Presented herein are proposed amendments to rules of the Tennessee Department of Transportation, Maintenance Division, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Transportation to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Department of Transportation, Legal Office, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, and in the Department of State, Division of Publications, 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the text of these proposed amendments, contact the Tennessee Department of Transportation, Legal Office, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, telephone number (615) 741-2941.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1680-3-1-.01, Applicability, is amended by deleting the words “the *Manual on Uniform Traffic Control Devices, Millennium Edition (MUTCD)*, as adopted in these rules” and substituting the words “the current edition of the *Manual on Uniform Traffic Control Devices (MUTCD)*, as adopted in these rules” so that as amended the rule shall read:

1680-3-1-.01 APPLICABILITY.

These rules shall govern the design and location of all signs, signals, markings and postings of traffic regulations on or along all streets and highways in the State of Tennessee, and no signs, signals, markings or postings of traffic regulations shall be located on any street or highway in the State of Tennessee regardless of type or class of the governmental agency having jurisdiction thereof except in conformity with the current edition of the *Manual on Uniform Traffic Control Devices (MUTCD)*, as adopted in these rules.

Authority: T.C.A. § 54-5-108(b).

Rule 1680-3-1-.02, Adoption of Manual on Uniform Traffic Control Devices, Millennium Edition, is amended by renaming the rule in the Table of Contents as “Adoption of Manual on Uniform Traffic Control Devices” and by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-3-1-.02 ADOPTION OF MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

The current edition of the United States Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices for Streets and Highways*, 2003 Edition, is hereby adopted in its entirety and incorporated herein by reference.

Authority: T.C.A. § 54-5-108(b).

Rule 1680-3-1-.03, Adoption of Future Revisions to Manual on Uniform Traffic Control Devices, Millennium Edition, is amended by renaming the rule in the Table of Contents as “Adoption of Future Revisions of Manual on Uniform Traffic Control Devices” and by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-3-1-.03 ADOPTION OF FUTURE REVISIONS OF MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

It is the intent of the Tennessee Department of Transportation to amend these rules as necessary to adopt future revisions of the MUTCD as may hereafter be approved by the United States Department of Transportation, Federal Highway Administration.

Authority: T.C.A. § 54-5-108(b).

Rule 1680-3-1-.04, Standard Highway Signs, is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-3-1-.04 STANDARD HIGHWAY SIGNS.

- (1) The provisions of the MUTCD set forth the basic principles that govern the design and usage of the most commonly used highway signs. Detailed specifications for the layout of these signs are provided in the latest edition of the United States Department of Transportation, Federal Highway Administration, *Standard Highway Signs*, which is incorporated by reference in the MUTCD.
- (2) Detailed specifications for other signs frequently used in the State of Tennessee, as may be required by statute or otherwise authorized by the MUTCD, are detailed in the *Tennessee Supplement to Standard Highway Signs*, which is published by the Tennessee Department of Transportation.
- (3) The Tennessee Department of Transportation authorizes the design and usage of the signs in the *Tennessee Supplement to Standard Highway Signs*.
- (4) Signs on any street or highway open to public travel in the State of Tennessee shall be fabricated, installed and used in accordance with the specifications of the current edition of *Standard Highway Signs* and/or, for signs erected on state highways, the *Tennessee Supplement to Standard Highway Signs*.

Authority: T.C.A. § 54-5-108(b).

The proposed rules set out herein were properly filed in the Department of State on the 16th day of July, 2004. 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 26th day of November, 2004. (07-25)

PUBLIC NECESSITY RULES

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

- 0030 - Commission on Aging and Disability - Public necessity rules required by the General Assembly - Chapter 0030-1-6 Requirement to Verify Background Information for New Employees and Volunteers - 7 T.A.R. (July 2004) - Filed June 16, 2004; effective through November 28, 2004. (06-32)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules implementing the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, Chapters 1200-13-1 General Rules - 5 T.A.R. (May 2004) - Filed April 28, 2004; effective through October 10, 2004. (04-20)
- 1340 - Department of Safety - Driver License Issuance - Public necessity rules regarding the issuance of driver licenses, Chapter 1340-1-13 Rules of Classified and Commercial Driver Licenses and Certificates for Driving, 7 T.A.R. (July 2004) - Filed June 30, 2004; effective through December 12, 2004. (06-48)
- 1360 - Department of State - Division of Business Services - Public necessity rules relating to Notaries Public, Chapter 1360-7-2 Notary Publics, 7 T.A.R. (July 2004) - Filed June 10, 2004; effective through November 22, 2004. (06-27)

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 FAMILY ASSISTANCE DIVISION

CHAPTER 1240-1-50 STANDARD OF NEED/INCOME

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the standard of need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. TCA Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the standard of need, in the annual Appropriations Act or in rule of the Department. Additionally, because the amount of funding available for grants and the new standard of need is not known until the passage of the annual Appropriations Act [Section 10, Item 22, Senate Bill 3415/House Bill 3551 (2004)] which did not occur until May 21st of 2004, and because the law requires that the standard of need and grant amounts be set by rule to be effective on July 1 of the fiscal year, it is not possible to establish rules by regular rulemaking procedures.

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

Virginia T. Lodge
Commissioner
Dept. of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

AMENDMENTS

Rule 1240-1-50-.20 Standard Of Need/Income, is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 STANDARD OF NEED/INCOME. The following table shows the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

(1) Families First Cash Assistance Standards

- (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
- (b) Gross Income Standard (GIS). This standard is set at One Hundred Eighty-Five Percent (185%) of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the Assistance Group (AG) is not eligible for Families First.
- (c) Standard Payment Amount (SPA). Tennessee does not meet One Hundred percent (100%) of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on available State and Federal funds is paid, except in the instances specified in 1240-1-50-.20(e).
- (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-

.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.

(e) Family Benefit Cap

1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by T.C.A. § 71-3-151, unless:
 - (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First; or
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home.
2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt of cash assistance for an eighteen (18)-month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.
 - (i) Departmental policies and rules with which the parent/caretaker must cooperate include, but are not limited to:
 - (I) Child support cooperation requirements, such as identifying the absent parent, meeting with child support enforcement staff, submitting a child for blood testing, and testifying in court if necessary;
 - (II) Carrying out and fulfilling Personal Responsibility Plan provisions and requirements; or

(III) Carrying out and fulfilling Work Plan provisions and requirements.

(f) An assistance payment is determined as follows:

1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC), the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.

3. The minimum monthly grant which can be paid is ten dollars (\$10).

(g) Families First Need/Payment Standards

1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	951	1358	1628	1713	2078	2105	2300	2329	2560	2586
Consolidated Need Standard	514	734	880	926	1123	1138	1243	1259	1384	1398
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2675	2753	2821	2882	2934	2984	3028	3064	3101	3130
Consolidated Need Standard	1446	1488	1525	1558	1586	1613	1637	1656	1676	1692
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	951	1358	1628	1713	2078	2105	2300	2329	2560	2586
Consolidated Need Standard	514	734	880	926	1123	1138	1243	1259	1384	1398
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2675	2753	2821	2882	2934	2984	3028	3064	3101	3130
Consolidated Need Standard	1446	1488	1525	1558	1586	1613	1637	1656	1676	1692
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 21.0% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 26.4% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2003-2004.
3. Standard for Families First Transitional Services
 - (i) Families First assistance groups and other low-income families may receive transitional services after the Families First case closes.
 - (ii) For purposes of this Part, "transitional services" is defined as services to assist the customer in attaining long-term self-sufficiency.
 - (iii) Transitional services will be provided subject to the continued availability of state and/or federal funding.
 - (iv) In order to receive these services, the assistance group's gross monthly income must meet a standard of need.

- (v) The standard of need for transitional services under this Part is defined as Two Hundred Percent (200%) of the Federal poverty level for the assistance group family size. The standard of need for this Part does not apply to Transitional Child Care or Transitional Medicaid.

Authority: *T.C.A. §§ 4-5-201 et seq.; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)- (g); Senate Bill 3415/House Bill 3551 (2004); 42 USCA §§ 601 et seq.; 45 CFR 233.20; and 42 USCA § 1315.*

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2004 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2004. (07-01)

RULEMAKING HEARINGS

THE TENNESSEE STATE BOARD OF ARCHITECTURAL AND ENGINEERING EXAMINERS - 0120

There will be a hearing before the Tennessee State Board of Architectural and Engineering Examiners to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 62-2-203(c). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. (Central Time) on Thursday, September 16, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 0120-1 REGISTRATION REQUIREMENTS AND PROCEDURES

AMENDMENTS

Paragraph (3) of rule 0120-1-.08 Applications – Landscape Architects is amended by deleting the text of the paragraph and substituting instead the following so that, as amended, paragraph (3) of rule 0120-1-.08 shall read:

- (3) The deadline for receipt of applications from candidates who must be examined prior to registration as a landscape architect shall be determined annually by the Board after the Board receives notification from the CLARB of the dates of the examinations.

Authority: *T.C.A. §§62-2-203(c) and 62-2-804(d).*

Subparagraph (a) of paragraph (1) of rule 0120-1-.10 Education and Experience Requirements – Engineer is amended by deleting the text of the subparagraph in its entirety and substituting instead the following so that, as amended, the subparagraph shall read:

- (1) (a) Accredited engineering programs. An engineering curriculum of four (4) years or more which is accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) (or its predecessor) may be approved by the Board as being satisfactory.

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

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

0120-1-.11 EDUCATION AND EXPERIENCE REQUIREMENTS – ARCHITECT.

- (1) For purposes of evaluating the education and experience of applicants for examination and registration as an architect, the Board will utilize the “Table of Equivalents” contained in Appendix “A” to Circular of Information No. 1, published in July 1983 by the National Council of Architectural Registration Boards (NCARB), except to the extent that such document conflicts with any applicable statute.
- (2) Accredited architecture programs. An architecture program which was accredited by the National Architectural Accrediting Board (NAAB) at the time of graduation, or graduation was not more than two (2) academic years prior to accreditation, may be approved by the Board as being satisfactory. For purposes of this paragraph, a state-supported school of architecture approved by the Tennessee higher education commission is deemed to have an accredited degree curriculum.
- (3)
 - (a) Nonaccredited foreign architecture programs. For purposes of T.C.A. §§ 62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited foreign program shall be referred by the applicant at the applicant’s expense to the Education Evaluation Services for Architects (EESA) of the NAAB for evaluation and recommendation. If, in the opinion of the EESA, the curriculum for the degree at the time of the applicant’s graduation is equivalent to NAAB accreditation requirements, the applicant shall submit his application in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below.
 - (b) Nonaccredited domestic architecture programs. For purposes of T.C.A. § 62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited domestic program shall be referred by the applicant at the applicant’s expense to the EESA of the NAAB for evaluation and recommendation. If, in the opinion of the EESA, the curriculum for the degree at the time of the applicant’s graduation is substantially equivalent to NAAB accreditation requirements, the applicant shall submit his application in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below. In reviewing a non-accredited architectural curriculum, the Board may approve either an architectural curriculum of not less than four (4) years offered by a school of architecture as part of an architectural curriculum toward a NAAB accredited degree or its equivalent.
 - (c) In reviewing applicants holding degrees from non-accredited architecture programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from NAAB accredited programs, the Board may consider the following factors:
 1. evidence of having obtained the statutory minimum acceptable practical experience in architectural work, and
 2. at least five (5) references from individuals having knowledge of the applicant’s technical competence as an architect.
- (4) For purposes of T.C.A. § 62-2-501(3), an approved “architecture-related curriculum” is an architectural

engineering or architectural engineering technology curriculum accredited by the Accreditation Board for Engineering and Technology (ABET).

- (5) Effective December 1, 1984, an applicant for the required examination for registration as an architect shall have completed the Intern-Architect Development Program (IDP) of the NCARB.
- (6) An applicant for registration by comity shall submit proof acceptable to the board of having obtained the practical experience in architectural work required by T.C.A. §§ 62-2-501 and 62-2-502.
- (7) In general, “practical experience in architectural work” consists of architectural experience which is supervised by a registered architect and meets the requirements of T.C.A. § 62-2-503.
- (8) Applicants meeting the above requirements shall be reviewed by the Board for determination of eligibility for either the Architect Registration Examination prepared by the National Council of Architectural Registration Boards or for registration by comity.

Authority: T.C.A. §§62-2-203(c), 62-2-501, 62-2-502 and 62-2-503.

Paragraph (2) of rule 0120-1-.23 Reexamination – Landscape Architect is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (2) of rule 0120-1-.23 shall read:

- (2) The fees for reexamination shall be as follows:

Individual Section(s)	\$75.00 plus the cost of the required section(s)
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Authority: T.C.A. §§62-2-203(c) and 62-2-804(e).

**CHAPTER 0120-5
CONTINUING EDUCATION**

AMENDMENTS

Rule 0120-5-.04 Basic Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read:

0120-5-.04 BASIC REQUIREMENTS.

- (1) A registrant seeking biennial renewal for the first time after initial registration shall, as a prerequisite to renewal, submit satisfactory evidence to the Board of having obtained twelve (12) PDH's the two (2) years immediately following initial registration and immediately preceding application for renewal. At least seven (7) of the PDH's claimed should address health, safety and welfare issues and technical competency.
- (2) A registrant seeking biennial renewal for each two (2)-year period thereafter shall, as a prerequisite to renewal, submit satisfactory evidence to the Board of having obtained twenty-four (24) PDH's the two (2) years immediately preceding application for renewal (carryover hours, not exceeding twelve (12) hours, from the preceding renewal period may be included). At least thirteen (13) of the PDH's claimed should address health, safety and welfare issues and technical competency.

- (3) A new registrant is not required to satisfy the continuing education requirements prescribed in this chapter as a prerequisite for initial registration. However, at the time of first registration renewal, the registrant must demonstrate completion of the required continuing education.
- (4) Individuals reapplying for registration shall, as a prerequisite to registration, submit evidence satisfactory to the Board of having obtained twenty-four (24) PDH's (thirteen (13) of which shall address health, safety and welfare issues and technical competency) during the twenty-four (24) months immediately preceding reapplication.

Authority: T.C.A. §§62-2-203(d).

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of July, 2004. (07-33)

**THE BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370
COUNCIL FOR LICENSING HEARING INSTRUMENT SPECIALISTS**

There will be a hearing before the Tennessee Board of Communications Disorders and Sciences' Council for Licensing Hearing Instrument Specialists to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, and 63-17-203. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 8th day of October, 2004.

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 1370-2-.12, Continuing Education, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, and is further amended by adding the following language as new part (3) (a) 4., and is further amended by deleting part (3) (b) 2. in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a), the new part (3) (a) 4., and the new part (3) (b) 2. shall read:

- (1) (a) Continuing Education

1. Each licensee registered with the Council is required to successfully complete twenty (20) hours of continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.
 2. Two (2) hours of the twenty (20) hour requirement shall pertain to Tennessee statutes and rules concerning hearing instrument specialists.
- (3) (a) 4. Course approval for attendance at Council meetings
- (i) Licensees may receive credit for one (1) hour of continuing education required in part (1) (a) 2. for each Council meeting that they attend in entirety.
 - (ii) Council members may receive credit for one (1) hour of continuing education required in part (1) (a) 2. for each Council meeting that they attend in entirety.
 - (iii) No more than two (2) hours of continuing education credit shall be awarded for attendance at Council meetings during any two (2) calendar year period.
- (3) (b) 2. Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches, except as provided in part (3) (a) 4.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, 63-17-203, and 63-17-214.

The notice of rulemaking set out herein was properly filed in the Department of State on the 16th day of July, 2004. (07-11)

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

There will be three public hearings before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at these hearings will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq.

All hearings will begin at 10:00 a.m. The first hearing will take place in Room 1A of the Development Resource Center located at 1250 Market Street, Chattanooga, TN on October 18, 2004. The second hearing will take place in Room 206 (Executive Seminar Room) of the Alexander Building of Pellissippi State Technical Community College, located at 10915 Hardin Valley Road, Knoxville, TN on October 19, 2004. The third hearing will take place in Meeting Room C of the main Memphis/Shelby County Public Library located at 3030 Poplar Avenue, Memphis, TN on October 21, 2004.

Written comments will be included in the hearing records if received by the close of business on October 21, 2004 at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on October 21, 2004.

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 October 8, 2004 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 Doug Warden at 615-532-0621. For complete copies of the text of the notice, please contact Doug Warden, Department of Environment and Conservation, 9th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-3-27 NITROGEN OXIDES

NEW RULE

TABLE OF CONTENTS

1200-3-27-.08 Standards and Requirements for Nitrogen Oxide Emission Reduction and to support Early Action Compacts

1200-3-27-.08 STANDARDS AND REQUIREMENTS FOR NITROGEN OXIDE EMISSION REDUCTION AND TO SUPPORT EARLY ACTION COMPACTS

- (1) This rule is to require nitrogen oxides (NO_x) emission reduction and to support early action compacts in the state.
- (2) For the purpose of this rule, terms not defined in this rule shall have the meanings given in Chapter 1200-3-2, except as specified in the paragraphs below.
- (3) Applicability of this rule is as follows:
 - (a) Except as specified in subparagraph (b) of this paragraph, the requirements of this rule apply to any fuel burning equipment (e.g., boiler or engine), incinerator, or unit of processing equipment (e.g., kiln) of a process emission source that received a construction permit or operating permit under chapter 1200-3-9 on or before (rule-effective date) and that has potential emissions of 50 or more tons of NO_x per calendar year and is located in one of the counties as follow:
 1. Fayette, Hardeman, Haywood, Lauderdale, Shelby, or Tipton.
 2. Cheatham, Dickson, Montgomery, or Robertson.

3. Anderson, Blount, Bradley, Hamilton, Jefferson, Knox, Loudon, McMinn, Marion, Meigs, Monroe, Rhea, Roane, Sevier, or Union.

Potential emissions of NO_x are those at maximum capacity under the physical and operational limitations that apply. Any physical or operational limitation on the capacity to emit NO_x, including control equipment and restrictions on hours of operation or on the type or amount of material combusted or processed, shall be treated as applying if the effect it would have on emissions is legally enforceable.

- (b) The requirements of this rule do not apply to any fuel burning equipment, incinerator, or unit of processing equipment that satisfies any of the criteria as follow:
 1. For this equipment or incinerator a reasonably available control technology (RACT), best available control technology (BACT), or lowest achievable emission rate (defined in rule 1200-3-9-.01) determination for nitrogen oxides has been made by the technical secretary after (5 years before rule-effective date).
 2. The equipment or incinerator is subject to a new source performance standard for nitrogen oxides promulgated after (5 years before rule-effective date).
 3. The equipment is either a NO_x Budget unit as defined in rule 1200-3-27-.06, a cement kiln subject to the requirements of rule 1200-3-27-.04, or an engine subject to the requirements of phase II of the NO_x SIP call, provided the unit, kiln, or engine contains components or is served by add-on emission controls, that are equivalent to a NO_x RACT level of local emissions control resulting in NO_x emission reductions. The owner or operator of such a source shall certify to the technical secretary that the unit, kiln, or engine meets the criteria of this rule in accordance with the compliance deadline of paragraph 1200-3-27-.08(5).
 4. The equipment or incinerator is exempt from permitting through rule 1200-3-9-.04 or is considered to be an insignificant activity or insignificant emission unit by rule 1200-3-9-.04. For the purpose of rule 1200-3-27-.08, the exclusion from exemption specified in paragraph 1200-3-9-.04(1) because of standards and requirements in chapter 1200-3-27 does not apply. Therefore, equipment and incinerators described in rule 1200-3-9-.04 are exempt from the requirements of rule 1200-3-27-.08 notwithstanding the provisions of paragraph 1200-3-9-.04(1).
 5. The engine drives solely a mobile source, e.g., an engine that propels a locomotive without generating electricity for uses other than on the locomotive and mobile rail equipment it propels.
 6. The nitrogen oxide emissions from the unit of processing equipment result exclusively from the use of incineration equipment to reduce the emission of other air contaminants, e.g., the use of a thermal oxidizer to control volatile organic compound emissions.
 7. The incinerator serves primarily as a control device to reduce the emission of other air contaminants, e.g., a thermal oxidizer to control volatile organic compound emissions in which over 50 percent of the heat value of the waste being incinerated is from those volatile organic compounds, or the fuel burning equipment or unit of processing equipment combusts primarily process wastes that otherwise would be emitted as air contaminants, e.g., a boiler in which over 50 percent of the heat input to the boiler is from a volatile waste gas steam from a process emission source.

8. The reciprocating internal combustion engine is fueled exclusively with natural gas during the five-month period May through September and has a rating of less than 2,400 brake horsepower.
 9. The combustion turbine or boiler has a rated input capacity no greater than 100 million Btu per hour.
 10. The equipment, incinerator, or unit does not emit NO_x during the five-month period May through September.
- (4) The owner and operator of each unit of fuel burning equipment, incinerator, or unit of processing equipment subject to the requirements of this rule shall apply, according to the compliance schedule specified in paragraph (5) below, NO_x emission control during the five-month period May through September of each year that satisfies either subparagraph (a) or (b), perhaps with offsetting credit as provided for in subparagraph (c), as follows:
- (a) The emission limits as follow:
 1. 0.10 pound per million Btu input for boilers with nameplate rated capacities no greater than 250 million Btu per hour that burn exclusively gaseous fuels, e.g., natural gas.
 2. 0.20 pound per million Btu input for boilers with nameplate rated capacities no greater than 250 million Btu per hour that burn solid or liquid fuels.
 3. 0.17 pound per million Btu input for boilers with nameplate rated capacities greater than 250 million Btu per hour.
 4. 0.20 pound per million Btu input for combustion turbines burning gaseous fuels.
 5. 0.30 pound per million Btu input for combustion turbines burning liquid fuels.
 6. 4 grams per horsepower-hour for reciprocating internal combustion engines that, as designed by their manufacturer, are not capable of being operated with exhaust oxygen concentrations equal to or less than 1.0 percent, by volume on a dry basis.
 7. 2 grams per horsepower-hour for reciprocating internal combustion engines other than as described in part 8 of (3)(b) above.
 8. 0.08 pound per million Btu input for units of process emission sources.
 - (b) Reasonably available control technology (RACT).
 - (c) Offsetting credit may be obtained from any fuel-burning equipment, incinerator(s), or unit(s) of processing equipment that is not subject to the requirements of this rule and is located within the same group of counties listed in the part of subparagraph (3)(a) above as that in which the recipient unit is located. Credit may be offset only once. The terms of said offsetting must be acceptable to the technical secretary, and may require additional monitoring, recordkeeping, and reporting, to be specified in the permits of both the donor and recipient units.
- (5) Compliance schedules apply as follow:

- (a) The owner or operator of equipment or an incinerator subject to the requirements of this rule and required to apply the emission control specified in paragraph (4) above shall satisfy the following schedule:
1. By (6 months after rule-effective date) submit to the technical secretary for approval an emission control and compliance plan, including an implementation schedule, that when implemented will achieve that compliance, e.g., RACT, as expeditiously as reasonably available.
 2. Within 45 days following notification from the technical secretary to the owner or operator that the technical secretary has determined the submitted emission control and compliance plan will not achieve the prescribed control or will not achieve control as expeditiously as reasonably available, submit to the technical secretary an amended emission control and compliance plan that when implemented will achieve compliance as expeditiously as reasonably available.
 3. Achieve compliance no later than either 12 months following notification by the technical secretary to the owner or operator that the submitted emission control and compliance plan will achieve compliance as expeditiously as reasonably available or 12 months following notification as provided in part 2 above from the technical secretary to the owner or operator that the technical secretary has determined the submitted emission control and compliance plan will not achieve compliance as expeditiously as reasonably available.
- (b) Instead of satisfying the schedule specified in subparagraph (a) above, the owner or operator of equipment or an incinerator may petition the board, through the technical secretary, for a different schedule that will apply in place of the schedule specified in subparagraph (a) above. The petition must be to the technical secretary by (6 month after rule-effective date) and must include supporting information that persuades the board to grant a different schedule. Upon receipt of the petition the technical secretary shall forward copies of the petition and supporting information to the board and shall request the board act on the petition at its next regular meeting following the board's receipt of the petition and supporting information. The board shall specify by board order the schedule that the petitioner is to satisfy.
- (c) The owner or operator of equipment or an incinerator that was exempt from the requirements of this rule through maintenance of emissions below the 50-tons per calendar year threshold specified in subparagraph (3)(a) above but that later exceeds this threshold shall, within 6 months after exceeding this threshold, submit to the technical secretary an emission control and compliance plan, including an implementation schedule, that when implemented will achieve compliance as specified in paragraph (4) above as expeditiously as reasonably available. Following this submittal the schedule specified in parts (a)2 and 3 above shall be followed. In lieu of satisfying this schedule, the owner or operator may petition the board according to the provisions of subparagraph (b) above. In this case the petition shall be to the technical secretary within 6 months after the applicable threshold is exceeded.
- (6) Recordkeeping and reporting requirements for equipment and incinerators referred to in subparagraph (3) of this rule apply as follow:
- (a) The owner or operator of equipment or an incinerator referred to in subparagraph (3)(a) above shall maintain records that document its applicable compliance schedule has been satisfied. Each of these records shall be maintained for five (5) years following the date of creation of the record and shall be made available for review by the technical secretary or representative. A copy of these records shall be submitted to the technical secretary upon request.
 - (b) The owner or operator of equipment or an incinerator that achieves exemption from the emission

control requirements of this rule through maintenance of emissions below the 50-tons per calendar year threshold specified in subparagraph (3)(a) above shall maintain records that document the equipment or incinerator is exempt from these standards through the applicable exempting provision. Each of the records shall be maintained for five (5) years following the date of creation of the record. These records shall be made available for review by the technical secretary or representative. A copy of these records shall be submitted to the technical secretary upon request.

- (c) The owner or operator of equipment or an incinerator that is subject to the emission control requirements of this rule shall report annually to the technical secretary the nitrogen oxide emissions from that equipment or incinerator for the preceding calendar year. Each report shall be submitted before March 31 of the year following the calendar year for which the report is being submitted. The first report shall be submitted before (the March 31 after the first full calendar year after rule-effective date).

Authority: T.C.A. §§68-201-105 and 4-5-210 et. seq

This notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of July, 2004. (07-29)

**DEPARTMENT OF HEALTH - 1200
TENNESSEE MEDICAL LABORATORY BOARD
DIVISION OF HEALTH RELATED BOARDS**

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-134, 68-29-104, 68-29-105, 68-29-111, 68-29-122, and 68-29-129. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee B Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 23rd day of September, 2004.

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 1200-6-3-.05 Licensure Discipline, Assessment of Costs, and Subpoenas, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph paragraph (1) (f), and is further amended by adding the following language as new paragraph (5) and renumbering the remaining paragraphs accordingly, so that as amended, the new catchline, the new subparagraph (1) (f), and the new paragraph (5) shall read:

1200-6-3-.05 LICENSURE DISCIPLINE, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SUBPOENAS.

- (1) (f) Civil Penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule.
- (5) Civil Penalties
 - (a) Purpose - The purpose of this is to set out a schedule designating the minimum and maximum Civil Penalties which may be assessed pursuant to T.C.A. §63-1-134.
 - (b) Schedule of Civil Penalties
 - 1. A Type A Civil Penalty may be imposed whenever the Board finds the medical laboratory or collection station which is required to be licensed by the Board guilty of a willful and knowing violation of the Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent, substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, willfully and knowingly operating a medical laboratory or collection station without a license from the Board is one of the violations of the Tennessee Medical Laboratory Act for which a Type A Civil Penalty is assessable.
 - 2. A Type B Civil Penalty may be imposed whenever the Board finds the medical laboratory or collection station which is required to be licensed by the Board is guilty of a violation of the Tennessee Medical Laboratory Act, or regulations promulgated pursuant thereto, in such a manner as to impact directly on the care of patients or the public.
 - 3. A Type C Civil Penalty may be imposed whenever the Board finds the medical laboratory or collection station which is required to be licensed by the Board is guilty of a violation of the Tennessee Medical Laboratory Act, or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only indirect relationship to patient care or the public.
 - (c) Amount of Civil Penalties
 - 1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 or more than \$1,000.
 - 2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.

3. Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a Civil Penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the Civil Penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and,
4. All proceedings for the assessment of Civil Penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-134, 68-29-104, 68-29-105, 68-29-111, 68-29-122, and 68-29-129.

Rule 1200-6-3-.15 Special Regulations for ASTC, Blood Donor Centers and Plasmapheresis Centers, is amended by adding the following language as new part (2) (b) 5., and is further amended by adding the following language as new subparagraph (2) (c) and renumbering the remaining subparagraphs accordingly:

- (2) (b) 5. Platelet pre-counts.
- (2) (c) Screening tests for educational purposes are limited to blood groups (ABO) and blood type (Rh).

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-104, and 68-29-105.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of July, 2004. (07-15)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
HEALTH SERVICES ADMINISTRATION
COMMUNITY SERVICES SECTION**

There will be a public hearing before the Department of Health, Community Services Section to receive comments concerning the Child Safety Fund, pursuant to Tennessee Code Annotated §§ 55-9-602 and 603. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated 4-5-201, et seq. and will take place in the Tennessee Room, Ground Floor of the Cordell Hull Building, located at 425 Fifth Avenue North, Nashville, Tennessee, 37247, at 1:00 P.M., central daylight time on the 15th day of September, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these findings) should contact the Community Services Section 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 Community Services Section to determine how it may reasonably provide such aid or service. Initial contact may be made with the Community Services Section's ADA Coordinator located on the sixth Floor of the Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, 37247-3901, (615) 741-0380.

For a copy of the entire text of this notice of rulemaking hearing, please contact: Alisa Malone, Community Services Section, sixth Floor Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, 37241, (615) 741-4545. Substance of Proposed Rules

**CHAPTER 1200-11-4
CHILD SAFETY FUND**

NEW RULES

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1200-11-4-.02 Definitions	1200-11-4-.05 Accountability of Participating Entities
1200-11-4-.03 Disbursement of Funds	1200-11-4-.06 Restriction of Program Participation

1200-11-4-.01 INTRODUCTION.

- (1) Tennessee Code Annotated ("T.C.A.") section 55-9-602 establishes the requirements for child passenger restraint systems for passenger motor vehicles operating in Tennessee and, levies fines for violations of the same. Further, the law establishes within the general fund a revolving special account known as the Child Safety Fund.
- (2) Effective July 1, 2004, section 55-9-602(f)(7) authorizes the Department, pursuant to duly promulgated rules and regulations, to determine equitable distribution of the moneys in the Child Safety Fund to those entities that are best suited for child passenger safety system distribution. These rules carry out this objective.

Authority: T.C.A. §§ 55-9-602, 55-9-610, 4-5-202, and 4-5-204.

1200-11-4-.02 DEFINITIONS.

For purposes of these rules, the terms set forth below shall have the following meanings:

- (1) “Child Safety Fund” means moneys disbursed to designated entities to provide child passenger restraint systems pursuant to T.C.A. 55-9-602.
- (2) “Child passenger restraint system” or “child passenger safety system” means an age or size appropriate child safety seat as required by T.C.A. 55-9-602.
- (3) “Commissioner” means the Commissioner of the Tennessee Department of Health or a duly authorized designee.
- (4) “Department or TDH” means the Tennessee Department of Health.
- (5) “Disbursement” means funds distributed quarterly from the Child Safety Fund to participating entities based on an equal fraction of available funds.
- (6) “Quarter” means a three (3) month period of the year used for monetary accounting purposes.
- (7) “Participating entity” or “entity” means an organization or entity approved by the Department to participate in the program.
- (8) “Passenger motor vehicle” means any motor vehicle with a manufacturer’s gross vehicle weight rating of ten thousand pounds (10,000 lbs.) or less that is not used as a public or livery conveyance for passengers. “Passenger motor vehicle” does not apply to motor vehicles that are not required by federal law to be equipped with safety belts.
- (9) “Poverty guideline” means the guideline used for determining whether a person or family is financially eligible for assistance or services under a particular Federal program as published annually in the Federal Register.
- (10) “Quarterly report” means the report to be submitted by participating entities to reflect the three (3) month period of child passenger restraint system distribution activity.

Authority: T.C.A. §§ 55-9-602, 55-9-610, 4-5-202, and 4-5-204.

1200-11-4-.03 DISTRIBUTION OF FUNDS.

The following criteria shall apply to the distribution of funds and the types of entities receiving funds for the distribution of child passenger restraint systems.

- (1) Funds distributed pursuant to these rules shall not exceed the amount of funds available to the Department from the Child Safety Fund.
- (2) The money in the Child Safety Fund shall be allocated and distributed equally in one-third (1/3) increments to qualified entities serving children within the three groups identified below.

- (a) One-third (1/3) of the Child Safety Fund shall be allocated for children under one (1) year of age, or any child weighing less than twenty (20) pounds.
 - (b) One-third (1/3) of the Child Safety Fund shall be allocated for children one (1) through three (3) years of age weighing greater than twenty (20) pounds.
 - (c) One-third (1/3) the of Child Safety Fund shall be allocated for children four (4) through eight (8) years of age and measuring less than five feet (5') in height.
- (3) Funds shall be used for the purchase of child passenger safety systems to be given to the parent or guardian of infants and children in accordance with the provisions of these rules.

1200-11-4-.04 ELIGIBILITY.

- (1) Eligibility Criteria for Participation in the Child Safety Fund.
 - (a) To be eligible, an entity must (1) be a governmental or (2) nonprofit organization under section 501(c) of the Internal Revenue Code, and provide services to low income families meeting the federal poverty guidelines.
 - (b) The entity shall submit to the Department an application to participate, using a form, and in a manner, prescribed by the Department.
 - (c) Participating entities shall be determined eligible based upon previous experience of providing services to children, age newborn through eight years old, in low income families that meet federal poverty guidelines.

Authority: T.C.A. §§55-9-602, 55-9-610, 4-5-202, and 4-5-204.

1200-11-4-.05 ACCOUNTABILITY OF PARTICIPATING ENTITIES.

- (1) The Department will collect data through quarterly reports submitted by each participating entity. The data shall be used to document how the entity used the money that was distributed from the Child Safety Fund.
- (2) The Department will maintain a database that lists all participating entities and the total number of child passenger restraint systems purchased with money through the Child Safety Fund.
- (3) The participating entity is required to submit a quarterly report, in a format prescribed by the Department, no later than 45 days after the end of the quarter.

Authority: T.C.A. §§55-9-602, 55-9-610, 4-5-202, and 4-5-204.

1200-11-4-.06 PARTICIPATING ENTITY RESPONSIBILITIES

- (1) It is the responsibility of a participating entity to meet the requirements as set forth in these rules.
- (2) An entity is obligated to expend the funds received during the disbursement period no later than the end of the next full quarter following the disbursement period, and in the manner defined in these rules and Departmental policies and procedures.
- (3) An entity will not be eligible to receive continued funding if it fails to submit the required report within forty five (45) days after the end of the quarter, as stated in 1200-11-4-.05(3). If the entity fails to submit the required report, a letter will be sent to the entity informing it that its participation has been cancelled until the report is received by the Department.
- (4) Fraud or misrepresentation in the implementation process will render the entity ineligible for future participation.
- (5) An entity participation in the Child Safety Fund is not a property right, and the Department may refuse or cancel an entity's participation if the entity fails to abide by these rules or program policies, or for any other reason as deemed necessary by the Department.

Authority: T.C.A. §§ 55-9-602, 55-9-610, 4-5-202, and 4-5-204.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of July, 2004. (07-37)

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

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to T.C.A. §§ 4-5-202, 71-1-105(1), (12) and (16) and 71-1-132. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Washington County Department of Human Services' Conference Room, at 103 East Walnut Street, Johnson City, Tennessee at 6:30 PM Eastern Time on Thursday September 16, 2004; Knoxville State Office Building 7th Floor Conference Room A, at 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Time on Friday, September 17, 2004; Chattanooga State Office Building Auditorium, at 540 McCallie Avenue, Chattanooga, Tennessee 37402 at 6:30 PM Eastern Time on Monday, September 20, 2004; Donnelley J. Hill State Office Building, Second Floor Auditorium at 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Thursday, September 23, 2004; Lowell Thomas State Office Building, Second Floor Conference Room, 225 Martin Luther King Jr. Drive Jackson, Tennessee 38301 at 6:30 PM Central Time on Wednesday, September 22, 2004; Citizen's Plaza State Office Building, Second Floor Conference Room, 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Time on Tuesday, September 21, 2004.

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, TN 37248, and telephone number (615) 313-5563 (TTY) -(800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: Barbara L. Broer sma, Citizen's Plaza Building, 400 Deaderick Street, Nashville, TN 37248-0006 and (615) 313-4731.

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES**

CHILD SUPPORT DIVISION

CHAPTER 1240-2-7

NEW RULES

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1240-2-7-.01 PURPOSE AND SCOPE OF RULES.

- (1) These rules establish procedures for the review and adjustment of child support orders being enforced by the Tennessee Department of Human Services under Title IV-D of the Social Security Act, 42 U.S.C §§ 651-669, and pursuant to the requirement of 42 U.S.C. § 666(a)(10) and T.C.A. § 36-5-103, as amended.
- (2) These rules do not apply to child support cases not being enforced by the Department.
- (3) These rules are applicable to child support orders being enforced by the Department by judicial order, or administrative order issued by the Department.

Authority: T.C.A. §§4-5-202; 71-1-105(1), (12), and (16); 71-1-132; 36-5-103(f); Acts 2004, Ch. 728; 42 U.S.C.A § 666(a)(10); 45 C.F.R. § 303.8.

1240-2-7-.02 DEFINITIONS.

- (1) Alternate residential parent—The “alternate residential parent” (ARP) is the parent who is not designated as the primary residential parent. (See paragraph (8)). This parent is also referred to as the “non-custodial parent” or “obligor.”
- (2) Caretaker—The person or entity that provides care and supervision of a child on a full-time basis. This person may be a relative of the child who voluntarily or, pursuant to tribunal order or other legal arrangement,

- is providing care and supervision of the child; or this may be a private or public agency providing custodial care and supervision for the child by voluntary placement by the child's caretaker, parent or relative or by other designated caretaker or by court order or other legal arrangement.
- (3) Custodial parent—For purposes of this Chapter, the parent having primary custody of the child. For purposes of this Chapter, the term has the same meaning as “primary residential parent” or “obligee”.
 - (4) Department—The Tennessee Department of Human Services.
 - (5) Non-custodial parent—For purposes of this Chapter, the parent that does not have primary custody of the child and who is required to pay child support to a custodial parent. The term has the same meaning as “alternate residential parent”.
 - (6) Obligee—The person to whom the child support is required to be paid by the obligor. This term has the same meaning as “custodial parent” or “primary residential parent” when the obligee is a parent of the child. An obligee may also be a non-parental caretaker of the child as defined in paragraph (2).
 - (7) Obligor—The person required to pay support. This term has the same meaning as “non-custodial parent” or “alternate residential parent” when the obligor is a parent of the child.
 - (8) Primary residential parent—The “primary residential parent” (PRP) refers to the parent designated as such by 402, and has the same meaning as the “custodial parent” or the “obligee”.
 - (9) Review and adjustment—The process, required by federal and state law applicable only to Title IV-D child support cases being enforced by the Tennessee Department of Human Services, in which existing orders for child support are evaluated by the Department to determine if they should be increased or decreased or should remain unchanged based upon criteria set forth in state and federal law and this Chapter.
 - (10) Significant variance—
 - (a) The standard for modification of a support order required to increase or decrease the amount of a child support order.
 - (b) Effective January 1, 2005, for orders involving low income obligors as otherwise defined by the Department, the standard for modification of a child support order shall be seven and one-half percent (7 ½ %) between the existing order and what the order would be based upon factors provided by law or regulations justifying an increase or decrease in the order.
 - (c) Effective January 1, 2005, for orders for obligors who do not meet the low income standard, the standard for modification of a child support order shall be fifteen percent (15%) between the existing order what the order would be based upon factors provided by law or regulations justifying an increase or decrease in the order.
 - (11) Substantial change of circumstances—A significant variance as defined in paragraph (10).
 - (12) Title IV-D—The provision of the federal Social Security Act containing requirements for the operation of the federal/state child support program that provides for the establishment, modification and enforcement of child support. The Tennessee Department of Human Services is the Title IV-D enforcement agency for Tennessee.

Authority: T.C.A. §§ 4-5-202; 71-1-105(1), (12), and (16); 71-1-132; 36-5-103(f); Acts 2004, Ch. 728; 42 U.S.C.A § 666(a)(10); 45 C.F.R. § 303.8.

1240-2-7-.03 REVIEW, ADJUSTMENT CYCLE; EVIDENCE STANDARDS.

- (1) Every three (3) years, in any support order subject to enforcement under Title IV-D of the Social Security Act, upon request of:

- (a) The custodial or non-custodial parent, or any other caretaker of the child, or,
 (b) The Department, if there is an assignment of support pursuant to Title 71, Chapter 3, Part 1;

the Department shall review, and, if appropriate under the child support guidelines, seek an adjustment of the support order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. Evidence of a “significant variance”, as defined by the Department’s child support guidelines, between the current support order and the amount that would be ordered under the Department’s child support guidelines, must be evident to permit an adjustment of the order.

- (2) Between three-year cycles, in any support order subject to enforcement under Title IV-D of the Social Security Act, upon request of:

- (a) The custodial or non-custodial parent, or any other caretaker of the child, or,
 (b) The Department, if there is an assignment of support pursuant to Title 71, Chapter 3, Part 1;

The Department shall review, and, if the available evidence demonstrates to the Department that there has been a substantial change in circumstances, the Department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subparagraph, a “substantial change in circumstances” shall be a “significant variance”, as defined by the Department’s child support guidelines, between the amount of the current order and the amount that would be ordered under the Department’s child support guidelines.

- (3) The review and adjustment in paragraphs (1) and (2) may be conducted by the court, or by the Department by issuance of an administrative order by the Department or its contractors.

Authority: T.C.A. §§ 4-5-202; 71-1-105(1), (12), and (16); 71-1-132; 36-5-103(f); Acts 2004, Ch. 728; 42 U.S.C.A § 666(a)(10); 45 C.F.R. § 303.8.

1240-2-7-.04 NOTICE OF REVIEW, REVIEW ALTERNATIVES AND APPEALS.

- (1) Form of Notices-Exceptions.

Except as otherwise provided in paragraphs (3) and (4), all notices under this Chapter shall be sent by regular U.S. mail to the non-custodial parent and to the custodial parent or other caretaker of the child at the address provided by them as reflected in the Department’s official child support records.

- (2) Notice to Custodial and Non-Custodial Parent and Caretaker of a Requested Review.

- (a) When a review is requested, the Department shall give written notice to the non-custodial parent, the custodial parent and/or the caretaker of the child that a review of the order of support has been initiated.
 - (b) The notice shall include information regarding the opportunity available to the non-custodial parent, the custodial parent and/or the caretaker of the child to present to the Department evidence about income of the parties, expenses for the children, any credits which the party may wish to be considered, or other matters which may have an effect on the appropriate amount of child support due under the child support guidelines.
 - (c) When the review is complete, the Department shall give written notice of the review findings to the non-custodial parent, the custodial parent and/or the caretaker of the child.
- (3) Notice of Intent to Administratively Adjust the Child Support Order.

If the Department elects to seek the adjustment of the support order by issuance of an administrative order, notice of the proposed administrative adjustment to the order of support may be sent by regular U.S. mail; certified mail, return receipt requested, electronic mail, or facsimile transmission to the last known address of the non-custodial parent, the custodial parent and/or the caretaker of the child thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support; provided, however, before administratively adjusting an order of support, the Department shall ensure that service of the notice of its intent to adjust the support order administratively is confirmed by certified mail or by personal service.

- (4) Election by Custodial and Non-Custodial Parent and Caretaker of Alternative Judicial Review of Proposed Adjustment.
- (a) The non-custodial parent, the custodial parent and/or the caretaker of the child shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support, or within thirty (30) days of the date of service by certified mail or personal service if the initial notice is returned as undeliverable, by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing written notice of the hearing to the Department by copy of such motion.
 - (b) The review by the court shall be completed within timeframes established by federal law or regulation, which is one hundred and eighty (180) days as of the effective date of this Chapter, or as may be otherwise amended by federal law or regulations.
 - (c) If the non-custodial parent, the custodial parent and/or the caretaker of the child contests the proposed administrative adjustment pursuant to the procedure in this paragraph, no further administrative appeal to the Department shall be available, and further appeal of the determination of the court regarding the support order shall be made pursuant to the Tennessee Rules of Appellate Procedure.
- (5) Administrative Adjustment If Judicial Review Is Not Elected.
- (a) If the non-custodial parent, the custodial parent and/or the caretaker of the child does not contest the proposed administrative adjustment to the order of support within thirty (30) calendar days of the mailing date of the notice of the proposed adjustment pursuant to the provisions of paragraph (3), or within thirty (30) days of the date of service by certified mail or personal

service if the initial notice is returned as undeliverable, the Department shall issue the administrative order adjusting the order of support.

- (b) A copy of an administrative order of adjustment of the child support order shall be sent to the clerk of the court that has jurisdiction of the child support order which has been administratively adjusted and it shall be filed in the court record.
 - (c) A copy of the order shall be sent to the non-custodial parent, the custodial parent and/or the caretaker of the child by the Department by general mail at the last known address shown in the Department's records with notice to the non-custodial parent, the custodial parent and/or the caretaker of the child of the right to appeal the administrative order adjusting the child support order.
 - (d) If an order of support is adjusted by administrative order of the Department pursuant to this paragraph, the non-custodial parent, the custodial parent and/or the caretaker of the child shall have the right to administratively appeal the adjustment by requesting the appeal to the Department as provided in Part 10 of Title 36, Chapter 5 and Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated.
 - (e) The non-custodial parent, the custodial parent and/or the caretaker of the child may request a stay of the administrative order pursuant to the provisions of the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated.
 - (f) The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order, and shall be subject to the limited scope of review as provided pursuant to T.C.A. § 36-5-1003.
- (6) Notice of the right to request a review, and, if appropriate, adjust the child support order shall be sent to the non-custodial parent, the custodial parent and/or the caretaker of the child by the Department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.
 - (7) The requirement for review and adjustment may be delayed if the best interests of the child require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

Authority: T.C.A. §§ 4-5-202; 71-1-105(1), (12), and (16); 71-1-132; 36-5-103(f); Acts 2004, Ch. 728; 42 U.S.C.A § 666(a)(10); 45 C.F.R. § 303.8.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of July, 2004. (07-35)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
APPEALS AND HEARINGS DIVISION**

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of repeals and amendments to its rules and the promulgation of new rules pursuant to T.C.A. §§ 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, Section 4-5-204 and will take place in the 2nd Floor Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. on Thursday, September 16, 2004.

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.

SUMMARY OF PROPOSED RULES

These amendments are proposed for the purpose of compliance with Federal and State statutes and regulations concerning the conduct of administrative hearings under the Administrative Procedures Act by the Department of Human Services and rulemaking procedures. The Division designation for the Administrative Procedures Division of the Department of Human Services in Chapter 1240-5 is amended to change the name of the Division from the Administrative Procedures Division to the Appeals and Hearings Division.

**CHAPTER 1240-5-1
INTRODUCTION**

Chapter 1240-5-1 serves as an introduction to the Rules of the Appeals and Hearings Division of the Department of Human Services.

1240-5-1.01 GRIEVANCES – Defines grievance and adds child support appeals as found in T.C.A. § 36-5-1001 et seq. and authorizes the Commissioner of the Department of Human Services to designate fair hearings before hearing officials in the Department of Human Services, Appeals and Hearings Division or the Department of State, Administrative Procedures Division in the Families First, Food Stamp, Medical Assistance, Adult and Family Services and Child Support Programs.

**CHAPTER 1240-5-2
DEFINITIONS**

Chapter 1240-5-2 contains the definitional section for terms commonly used in the Appeals and Hearings Division's Rules.

1240-5-2.01 – DEFINITIONS – Adds and revises definitions used in the Division's Rules.

CHAPTER 1240-5-3 FAIR HEARING REQUESTS

Chapter 1240-5-3 establishes the right to appeal, right to receive information regarding the right to appeal, the time limits for filing, grounds for dismissal, group hearings, and time calculations.

1240-5-3-.01 RIGHT TO APPEAL – Establishes the right to appeal actions of the Department of Human Services for applicants or recipients of assistance or services and any party to a child support action, as provided in T.C.A. § 36-5-1001 et seq., and requires child support appeals to be submitted in writing as required by statute.

1240-5-3-.03 TIME LIMIT FOR FILING AN APPEAL – Sets the program-specific time limits within which an appeal must be filed and establishes controlling law as to time limits and review procedures when conflicts with the Tennessee Uniform Administrative Procedures Act are present.

1240-5-3-.04 DISMISSAL OF THE HEARING REQUEST – Establishes the reasons a request for hearing and previously accepted hearing request may be dismissed.

1240-5-3-.06 TIME – Establishes the procedure by which time periods shall be computed.

CHAPTER 1240-5-4 NOTICE OF THE HEARING

Chapter 1240-5-4 Describes the notice required for an administrative hearing and procedures for pre-hearing motions and conferences, subpoenas for evidence and witnesses, right to representation by an attorney, and continuances.

1240-5-4-.01 Notice - Requires adequate written notice of the hearing and prescribes the contents of the notice of hearing. Provides for the service methods of the notice of the hearing.

1240-5-4-.03 Subpoenas for Evidence and Witnesses – Allows for the hearing official to issue subpoenas in blank for parties to complete and serve in accordance with the Tennessee Rules of Civil Procedure.

1240-5-4-.04 Representation by Counsel – Allows any party to a contested case hearing to be advised and represented, at the party's own expense, by a licensed attorney.

1240-5-4-.05 Pre-hearing Motions – Sets procedures for pre-hearing motions if the parties cannot resolve a matter on an informal basis.

1240-5-4-.06 Continuance – Allows continuances to be granted for good cause shown and mutual consent, allows similar time limit extension for decision, and deletes the previous thirty (30) days-only continuance.

CHAPTER 1240-5-5 THE ADMINISTRATIVE JUDGE/HEARING OFFICER

Chapter 1240-5-5 amends the Chapter name to “The Hearing Official” and describes the role and authority of the hearing official as well as establishes an order of proceedings and establishes procedures for defaults.

1240-5-5-.01 ROLE – Describes the role of the Appeals and Hearings Division in administrative hearings and authorizes fair hearings, at the designation of the Commissioner of the Department of Human Services, to be conducted before hearing officials in the Department of State in the Families First, Food Stamp, Medical Assistance, Adult and Family Services and Child Support Programs.

1240-5-5-.03 ORDER OF PROCEEDINGS – Establishes an order of proceedings for an administrative hearing.

1240-5-5-.04 DEFAULT AND UNCONTESTED PROCEEDINGS – Establishes the procedures for entry of default, related dismissals and uncontested proceedings

CHAPTER 1240-5-6 CONTENT OF THE HEARING

Chapter 1240-5-6 amends the Chapter name to “Rules of Evidence and Discovery” and defines the rules of evidence to be followed by the hearing official and affirms rights of the parties at the hearing. 1240-5-6-.02, 1240-5-6-.03 and 1240-5-6-.04 allow examination of the Department of Human Services’ case file; disallow ex parte communications; and allow reasonable discovery and there are no proposed amendments.

1240-5-6-.01 RULES OF EVIDENCE – Defines the rules of evidence to be followed by the hearing official and affirms the parties’ rights, and establishes the procedure for admitting affidavits into evidence.

CHAPTER 1240-5-7 THE HEARING REPORT

Chapter 1240-5-7 amends the Chapter name to “The Hearing Record” and establishes contents of the official Hearing Record and requires electronic recording of all oral proceedings.

1240-5-7-.01 CONTENTS OF HEARING RECORD – Requires specific items to be included in the hearing record.

1240-5-7-.02 RECORD OF ORAL PROCEEDINGS – Requires electronic recording of all oral proceedings. The retention requirement is deleted and moved to a more appropriate subsection.

CHAPTER 1240-5-8 THE FINAL ORDER

Chapter 1240-5-8 amends the Chapter name to “The Initial and Final Order” and establishes the authority, contents and time limitations for entry of initial and final orders and the scope of reinstatement of assistance or services and recovery of benefits.

1240-5-8-.01 TIME LIMITATION; CHANGES TO APPEAL PROCESSING TIMEFRAMES – Defines and updates for compliance with controlling law and regulation, for administrative purposes, the time period in which a final order must be entered in an appeal.

1240-5-8-.02 CONSIDERATION OF THE ENTIRE RECORD CHANGES TO INITIAL AND FINAL ORDERS – Sets criteria for entry, service, and content of a final order.

1240-5-8-.03 PUBLIC ACCESS TO FINAL ORDERS – Defines the parameters of the public access to hearing record.

1240-5-8-.04 RE-INSTATEMENT OF ASSISTANCE OR SERVICES – Establishes scope of reinstatement of assistance or services in a favorable decision.

1240-5-8-.05 RECOVERY OF ASSISTANCE – Establishes scope of the Department’s recovery of benefits.

CHAPTER 1240-5-9 RECONSIDERATION

Chapter 1240-5-9 Reconsideration is repealed. The new Chapter is “Reconsideration and Appeals of Orders” and establishes the grounds for, effects of, and right of notice to petition for reconsideration of an initial or final order or petition for appeal of an initial order.

1240-5-9-.01 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION AND/OR APPEAL OF THE INITIAL ORDER – Requires notice of right to reconsideration in the initial order.

1240-5-9-.02 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION OF A FINAL ORDER – Requires notice of right to reconsideration in the final order.

1240-5-9-.03 EFFECT OF FILING A PETITION FOR RECONSIDERATION OF THE FINAL ORDER - Establishes the effective date of the final order.

1240-5-9-.04 APPEAL OF INITIAL ORDER AND RECONSIDERATION OF INITIAL/FINAL ORDER – Establishes criteria concerning petitions and establishes they are deemed denied if no response in twenty (20) days.

1240-5-9-.05 ADMINISTRATIVE RECOURSE WHEN AGGRIEVED BY FINAL ORDER – provides the rule reference for review of Vocational Rehabilitation Services fair hearing decisions.

CHAPTER 1240-5-10 JUDICIAL REVIEW

Chapter 1240-5-10 requires notice of right to judicial review; explains the method for filing for judicial review and provides the statutory reference to judicial review of child support administrative decisions; and allows clerical mistakes in the administrative hearing record to be corrected by the hearing official.

CHAPTER 1240-5-12 ADOPTION OF RULES

Chapter 1240-5-12 establishes the procedure and authority for the Department of Human Services to adopt and propose Rules in accordance with the Tennessee Uniform Administrative Procedures Act and state and Federal statutes and regulations; the legal authorization for the Department’s rulemaking; maintenance and supplying copies of the Department’s rules upon a reasonable charge to interested persons; and the criteria for petitions for rules.

CHAPTER 1240-5-14 INTENTIONAL PROGRAM VIOLATIONS

Chapter 1240-5-14 establishes procedures for administrative disqualification hearings for charges of intentional program violations in the Food Stamp Program. There are no proposed amendments to this Chapter other than updating the authority for 1240-5-14-.06.

CHAPTER 1240-5-15
FAMILIES FIRST ADMINISTRATIVE DISQUALIFICATION HEARINGS

Chapter 1240-5-15 establishes procedures for administrative disqualification hearings for charges of intentional program violations in the Families First Program. There are no proposed amendments to this Chapter other than updating references from AFDC to Families First, correcting the rule cited in 1240-5-15-.01 to read “defined by Rule 1240-1-53-.01”, and updating the authorities for the rules.

CHAPTER 1240-5-16
CODE OF CONDUCT

1240-5-16 is a new Chapter and requires a hearing official to abide by the applicable sections of the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court and any subsequent amendments.

Authority: T.C.A. §§ 4-5-202, 203 , 71-1-105(12), 71-1-111.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of July, 2004. (07-36)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-6-101, 63-6-201, 63-6-204, 63-6-207, 63-6-210, 63-6-211, 63-6-230, 63-6-701 through 707, Public Chapter 579 of the Public Acts of 2004, and Public Chapter 678 of the Public Acts of 2004. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 17th day of September, 2004.

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

- (1) (c) Inactive Pro Bono Licensure Renewal Fee\$ 00.00
- (1) (f) Licensure Renewal Fee - To be paid biennially by all licensees..... \$225.00
except Inactive Pro Bono licensees. This fee also applies to
licensees who reactivate a retired license or who reactivate an
inactive license.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-6-210, 63-6-211, and 63-6-230.

Rule 0880-2-.03 Licensure Process-U.S. and Canada Medical School Graduates is amended by deleting paragraph (12) in its entirety and renumbering the remaining paragraph accordingly.

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

Rule 0880-2-.04 Licensure Process—International Medical School Graduates is amended by deleting paragraph (5) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (15) in its entirety and renumbering the remaining paragraph accordingly, so that as amended, the new paragraph (5) shall read:

- (5) An applicant shall submit evidence satisfactory to the Board of successful completion of a three (3) year residency program approved by the American Medical Association or its extant accreditation program for medical education or its successor. Such evidence shall include but not be dispositive of this requirement, a notarized certificate of completion and a letter attesting to satisfactory completion issued by the director of the program which shows that the residency was completed in one (1) discipline. An applicant who holds a specialty board certification or is eligible to hold such certification may be deemed to have completed the three (3) year residency requirement of this rule if the specialty board is recognized and is a member of the American Board of Medical Specialties.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-207, and 63-6-211.

Rule 0880-2-.05 Licensure of Out-of-State and International Applicants, is amended by deleting paragraph (11) in its entirety and renumbering the remaining paragraph accordingly.

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

Rule 0880-2-.06 Training Licenses and Licensure Exemptions, is amended by deleting the introductory language in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (a) but not its parts and substituting instead the following language, and is further amended by deleting part (4) (a) 1. in its entirety and substituting instead the following language, so that as amended, the new introductory language, and the new subparagraph (4) (a) but not its parts, and the new part (4) (a) 1. shall read:

0880-2-.06 TRAINING LICENSES AND LICENSURE EXEMPTIONS. Those persons who pursuant to T.C.A. §63-6-207 (d) (1) may be eligible to practice medicine in Tennessee with a training license issued by the Board may secure such license pursuant to paragraph (1) of this rule. Those persons who pursuant to T.C.A. §§ 63-6-201 or 63-6-207 (d) (2) may be eligible to practice medicine in Tennessee with a Board issued exemption from licensure may secure such exemptions pursuant to paragraphs (2), (3) or (4) of this rule. Persons who have been issued a license to practice medicine pursuant to either rule 0880-2-.03, 0880-2-.04, or 0880-2-.05 and whose license has not been revoked or suspended need not obtain an exemption from licensure or a training license pursuant to this rule to be able to participate in a training program.

- (4) (a) Prior to the commencement of practice by any individual in a training program, except individuals covered pursuant to T.C.A. §63-6-207(d) (2) (C), it shall be the responsibility of the program director or the dean responsible for the training program which meets the requirements of T.C.A. §63-6-207(d) (2) to make an application to the Board's Administrative Office which contains all of the following:
 - (4) (a) 1. Evidence of how the training program meets the requirements of T.C.A. §63-6-207 (d) (2). Accreditation by the Accreditation Council of Graduate Medical Education or evidence of affiliation with a hospital so accredited is acceptable for purposes of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-6-201, and 63-6-207.

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended by deleting paragraph (8) in its entirety.

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

Rule 0880-2-.14 Specially Regulated Areas and Aspects of Medical Practice, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) The physician's signature is required as the official certifying act of the physician on all written prescriptions. Physicians may utilize a legible and specifically identifying electronic signature to satisfy the requirements of this rule and as the official certifying act of the physician.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-204, and Public Chapter 678 of the Public Acts of 2004.

Rule 0880-2-.21 Office Based Surgery, is amended by deleting paragraph (12), Reserved, in its entirety and substituting instead the following language, so that as amended, the new paragraph (12) shall read:

- (12) The Board shall appoint a standing Office Based Surgery Committee comprised of three (3) members of the Board who shall meet twice a year to review and make whatever recommendations for revision of these rules as circumstances require. All comments and suggestions for revision and improvement of these rules should be addressed to that committee and sent to the Board's Administrative Office.

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

NEW RULE

0880-2-.22 FREE HEALTH CLINIC, INACTIVE PROBONO AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any physician licensed to practice medicine in this state or any other state who has not been disciplined by any medical licensure board may have their license converted to or receive a

Tennessee “Special Volunteer License,” as defined in T.C.A. § 63-1-201, which will entitle the licensee to practice without remuneration solely within a “free health clinic,” as defined by T.C.A. § 63-1-201, at a specified site or setting by doing the following:

1. Obtaining from the Board’s administrative office a “Special Volunteer License” application, completing it and submitting it along with any required documentation to the Board’s administrative office; and
 2. Have the licensing authority of every state in which the physician holds or ever held a license to practice medicine submit directly to the Board’s administrative office the equivalent of a “certificate of fitness” as described in T.C.A. § 63-1-118 which shows that the license has never been subjected to any disciplinary action and is free and clear of all encumbrances; and
 3. For physicians who have not been licensed in Tennessee, comply with all provisions of paragraphs (2), (3), (4), and (7) of rule 0880-2-.05 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 4. Submitting the specific location of the site or setting of the free health clinic in which the licensee intends to practice along with proof of the clinic’s private, and not-for-profit status.
- (b) A physician holding a Special Volunteer License is not required to pay any fee for its issuance or the required biennial renewal pursuant to the Division of Health Related Board’s biennial birthdate renewal system
- (c) A physician holding a Special Volunteer License may not do any of the following:
1. Practice medicine anywhere other than in the free health clinic site or setting specified in the application; and
 2. Charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of medical or any other services; and
 3. Practice for any free health clinic that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
- (d) Special Volunteer Licenses are subject to all of the following
1. All rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .10, except those requiring the payment of any fees; and
 2. The rules governing continuing medical education as provided by rule 0880-2-.19; and
 3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses issued by the Board.
- (2) Inactive Pro Bono Practice Pursuant to T.C.A. § 63-6-230 – Applicants who intend to exclusively practice medicine without compensation on patients who receive medical services from organizations granted a determination of exemption pursuant to Section 501 (c)(3) of the Internal Revenue Code may obtain an inactive volunteer license to do so by doing as follows:

- (a) Applicants who currently hold a valid Tennessee license to practice medicine issued by the Board pursuant to this rule which is in good standing must:
 - 1. Retire their active licenses pursuant to the provisions of rule 0880-2-.10 (2); and
 - 2. Have submitted to the Board Administrative Office directly from the qualified organization proof of the determination of exemption issued pursuant to Section 501 (c)(3) of the Internal Revenue Code; and
 - 3. Submit a written certification that they are practicing medicine exclusively on the patients of the qualified entity and that such practice is without compensation.
 - (b) Applicants who do not currently hold a valid Tennessee license to practice medicine must:
 - 1. Obtain a license by complying with all provisions of paragraphs (2), (3), (4), (6) and (7) of rule 0880-2-.05 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 - 2. Have submitted to the Board Administrative Office directly from the qualified organization proof of the determination of exemption issued pursuant to Section 501 (c)(3) of the Internal Revenue Code; and
 - 3. Submit a written certification that they are practicing medicine exclusively on the patients of the qualified entity and that such practice is without compensation.
 - (c) Inactive pro bono licenses are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .10, and are subject to all rules governing continuing medical education as provided by rule 0880-2-.19. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.
 - (d) Inactive pro bono licenses are distinguished from the inactive licenses referred to in rule 0880-2-.10 only by the fact that licenses issued pursuant to this rule allow the practice of medicine in Tennessee with the restrictions placed on it by this rule.
- (3) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
- (a) Any physician licensed in this or any other state, territory, district or possession of the United States whose license is not under a disciplinary order of suspension or revocation may practice medicine in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (b) Any person who may lawfully practice medicine in this or any other state, territory, district or possession of the United States under an exemption from licensure and who is not under a disciplinary order of suspension or revocation and who is not and will not “regularly practice,” as defined by T.C.A. § 63-6-703 (3) may practice medicine in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (c) A physician or anyone who practices under an exemption from medical licensure pursuant to this rule may not charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal

benefit programs for the provision of medical or any other services; and may not practice for any organization that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.

- (d) Any organization that organizes or arranges for the voluntary provision of health care services on residents of Tennessee may utilize persons described in subparagraphs (a) and (b) to practice medicine only when it has complied with the provisions of T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
- (4) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).
- (5) Application review and licensure decisions for these types of medical licensure or organization registration shall be governed by rule 0880-2-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-6-101, 63-6-230, 63-6-701 through 707, and Public Chapter 579 of the Public Acts of 2004.

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of July, 2004. (07-19)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 2 p.m. (central) on the 11th day of October, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 138.

For a copy of this notice, contact: Sharla Dillon, Docket Manager, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37343, (615) 741-2904, extension 136.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1220-4-2 REGULATIONS FOR TELEPHONE COMPANIES

Tennessee Regulatory Authority Rule 1220-4-2-.43 through .54, as amended, shall read:

TABLE OF CONTENTS

1220-4-2-.43	Authorization To Operate Pay Telephone Service	1220-4-2-.50	Inspection of Pay Telephone Service
1220-4-2-.44	Data Required For Authorization	1220-4-2-.51	Penalties for Violations
1220-4-2-.46	Authority Approval of Authorization	1220-4-2-.52	Reauthorization To Provide Pay Telephone Service
1220-4-2-.47	Denial of Authorization	1220-4-2-.53	Revocation of Authorization To Provide Pay Telephone Service
1220-4-2-.48	Authorization Renewal	1220-4-2-.54	Unauthorized Pay Telephone Service
1220-4-2-.49	Pay Telephone Service Violations		

1220-4-2-.43 AUTHORIZATION TO OPERATE PAY TELEPHONE SERVICE

- (1) Every owner or prospective owner, who is not a public telephone company certified by this Authority in accordance with Tenn. Code Ann. §65-4-201, of a public pay telephone instrument located in the state of Tennessee connected with or to be connected with the public network shall submit a petition for authorization to provide public pay telephone service to the Authority accompanied by the fee provided for in Tenn. Code Ann. §65-2-103. Each company or individual operating a public pay telephone service prior to July 1, 1990 and required to be authorized by this rule shall submit one petition for authorization to include all existing public pay telephone locations owned or operated by said company or individual. All petitions submitted after July 1, 1990 shall be to authorize each public pay telephone service instrument.
- (2) All owners, other than certified public telephone companies, of public pay telephone instruments connected to the public network by the effective date of this rule shall have until July 1 of the year in which this rule goes into effect to submit the petition required by section (1) of this rule. Pay telephone service to commence or to be reconnected to the network after this date shall not be authorized for service until all the requirements of rules governing pay telephone service are met.
- (3) Public pay telephone service shall mean the resale of local service and/or intrastate toll telephone service through customer or telephone company provided equipment which are coin-operated or coin less and whose calls are sent paid or non-sent paid that is made available to the general public.
- (4) Inmate pay telephone service shall mean the resale of local service and/or intrastate toll service through customer or telephone company provided equipment which are coin-operated or coin less and whose calls are sent paid or non-sent paid that is made available exclusively to the inmate population at inmate facilities.
- (5) Pay telephone service shall mean either public or inmate pay telephone service.

1220-4-2-.44 DATA REQUIRED FOR AUTHORIZATION.

- (1) In addition to the receipt of a valid filed petition for authorization, the Authority shall require the submission of relevant data and owner certifications on forms supplied by the Authority concerning the operation of a pay telephone service.
- (2) The following data relating to the entity owning or operating the pay telephone service shall be submitted prior to authorization:
 - (a) the names, address and telephone number of the individual owner or the responsible individual with the entity which owns the instrument;

- (b) information about the structure of the business organization owning the instrument and where applicable, a copy of any Articles of Incorporation, Partnership agreement or By Laws of any corporation owning the instrument and a copy of a license to do business in Tennessee;
 - (c) an up-to-date financial statement for the individual or entity operating the pay telephone service which includes a statement indicating revenues and expenses;
 - (d) the name, address, and telephone number of a Tennessee contact person responsible for and knowledgeable about the instrument or instruments;
 - (e) repair and maintenance information including the name, local address, telephone number, and qualifications of the individual or company responsible for servicing the instrument(s) and supplying refunds;
 - (f) a copy of the display card to be posted on the pay instrument which contains operating instructions and other required disclosures.
- (3) The following data relative to the particular pay telephone instrument shall be submitted prior to authorization:
- (a) a description of the instrument including the name and telephone number of the manufacturer, the model and FCC registration number, and the precise location by address and telephone number of the instrument;
 - (b) identification of the local exchange telephone company (LEC), the inter-exchange carrier, and reseller or alternate operator service serving the instrument.

Authority: T.C.A. §65-4-116.

1220-4-2-.45 CERTIFICATIONS REQUIRED FOR AUTHORIZATION. To insure uniformity throughout the state with regard to the provision of pay telephone service to the public, the owner or operator of a public pay telephone and inmate pay telephone service seeking authorization to operate a pay telephone service shall agree to abide by the following terms and conditions:

- (1) The following calls shall be provided by public pay telephones without depositing money and free of charge to the customer: calls to the local exchange operator; 911 or emergency numbers; local and intrastate directory assistance numbers; toll-free and 800 service numbers; pay phone repair and refund numbers; and inter-exchange access numbers.
- (2) The maximum rate allowed on an inmate pay telephone local collect call, including the operator surcharge, is \$1.50 regardless of the duration of the call.
- (3) The public pay telephone shall provide the following: two-way calling capability (unless waived by the Authority); no time limits on calls; the acceptance of nickels, dimes and quarters; and coin return for incomplete calls (coin less phones shall not be required to accept coins).
- (4) All public pay telephone instruments installed after July 1, 1990 shall be installed in accordance with the requirements of the American National Standards Institute for Buildings and Facilities – Providing Accessibility and Usability for Physically Handicapped People, ANSI, A.117.1 (1986), Section 4.29, Telephones. Provided, however, that in a given location where an owner has installed more than one instrument, only one pay telephone instrument shall be required to meet those requirements.

- (5) All public pay telephone and inmate pay telephone instruments shall comply with Authority approved telecommunications industry standards and the current National Electric Code.
- (6) Local telephone directories shall be provided at each public pay telephone service location upon commencement of service.
- (7) The owner of pay telephone service shall read and comply with all Authority rules and regulations governing pay telephone service.
- (8) The owner of inmate pay telephones shall charge for intrastate toll calls no more than the rates approved by the Authority for the dominant intraLATA and interexchange carrier in the state.
- (9) The owner of public pay telephone service shall provide an instrument capable of completing local and long distance calls. Provided however, that a coin less pay telephone is exempt from this requirement as long as it is located in close proximity or next to a pay phone with local and long distance calling capabilities.
- (10) The owner of public pay telephone service agrees to provide customer access to all interexchange carriers certificated to do business in Tennessee in the IXC's preferred manner as officially designated by said carrier to the.

Authority: T.C.A. §65-4-116.

1220-4-2-.46 AUTHORITY APPROVAL OF AUTHORIZATION TO OPERATE PAY TELEPHONE SERVICE

- (1) Upon receipt of the petition, the required data and any fees required for full compliance with Authority rules and statutes, the Authority shall authorize this service by issuing an authorization number for each pay telephone service company. The Authority shall notify the owner of said instrument of this number so service may be commenced.
- (2) The owner of the authorized public pay telephone service may commence service after doing the following:
 - (a) displaying the charge for a local call and any operating instructions on the face of the instrument;
 - (b) affixing the Authority authorization number in a permanent manner to the face of the instrument;
 - (c) displaying on the face of the instrument a telephone number to be used without charge to report malfunctions and obtain refunds;
 - (d) displaying the name of the owner of the instrument and the name of the long distance carrier serving the instrument on the face of the instrument;
- (3) Owners or operators of pay telephone service who has previously been authorized by the Authority for operations in this state may commence service at new locations prior to submission of the required data under terms and conditions to be established by the Authority or its designee.

Authority: T.C.A. §65-4-116.

1220-4-2-.47 DENIAL OF AUTHORIZATION

Authorization may be denied to those petitioners failing to fully comply with the applicable filing requirements or to pay the required fees as provided by Authority rule or statute.

1220-4-2-.48 AUTHORIZATION RENEWAL

- (1) Authorization to operate pay telephone service shall expire on July 1 of the year following the year in which initial authorization was obtained from the Authority and authorization renewals shall expire annually on each July 1 thereafter.
- (2) In order to renew this authorization, an application must be filed with the Authority before July 1 of each year on forms prescribed by the Authority. This authorization renewal application shall be accompanied by any annual inspection fee required by statute.

Authority: T.C.A. §65-4-116.

1220 4-2-.49 PAY TELEPHONE SERVICE VIOLATIONS

- (1) The following shall constitute violations of the Authority's rules and requirements for authorized pay telephone service:
 - (a) Charging an amount for calls which exceed the amount authorized by the Authority.
 - (b) Imposing a time limit for local calls or failing to provide two-way calling service unless one-way service is authorized by the Authority (Inmate pay phones are exempt from this requirement).
 - (c) Charging for or failing to provide access without depositing money for calls to the operator, 911 or emergency numbers where 911 is not available, toll-free services, or intrastate or local directory assistance (Inmate pay phones are exempt from this requirement).
 - (d) Attaching the instrument to any subscribed access line service other than a single public telephone access line directly connected to the LEC network and billed at the tariff rate (Inmate pay phones are exempt from this requirement).
 - (e) Attaching the instrument to an extension instrument without a private cut-off to automatically disconnect when the receiver is lifted for service, and operating semi-public additional sets connected to an authorized instrument in violation of the applicable tariff of the local exchange company, with the exception that such extension may have a dial or tone pad (Inmate pay phones are exempt from this requirement).
 - (f) Failure to display prominently on the face of the pay telephone instrument any of the following:
 1. A statement identifying the charge and operating instructions for its use.
 2. A statement indicating the name of the owner of the instrument and identifying the long distance carrier serving the instrument.
 3. A telephone number, which can be reached without charge or without having to deposit money where users can report malfunctions and obtain refunds (Inmate pay phones are exempt from this requirement).

4. The Tennessee Regulatory Authority authorization number.
- (g) Failure to meet any of the following:
1. Requirements governing telephone service access by impaired or handicapped persons as required by Authority rule.
 2. All applicable telecommunications industry and electrical safety standards as required by Authority rule.
- (h) Failure to provide instruments capable of accepting nickels, dimes, and quarters (Coinless and inmate pay phones are exempt from this requirement).
- (i) Failure to return coins to the customer for incomplete calls (Coinless and inmate pay phones are exempt from this requirement).
- (j) Failure to repair the instrument within 72 hours of notification by the Authority, unless such repairs are the responsibility of the LEC providing access and failure to provide refunds in a timely manner.
- (k) Failure to provide access without charge to all interexchange carriers certificated to do business in Tennessee in the preferred manner designated with the Authority by each IXC, unless said instrument is owned by an interexchange carrier or is an inmate pay phone.

Authority: T.C.A. §65-4-116.

1220-4-2-.50 INSPECTION OF PUBLIC PAY TELEPHONE SERVICE

- (1) All authorized pay telephone instruments shall be subject to periodic and random inspections by Authority personnel.
- (2) If upon inspection, a violation is discovered, the Authority inspector shall place an out-of-service sticker on the pay telephone instrument and shall notify the owner as soon as possible of the violation and the penalties therefore. The sticker shall contain the date and time of the inspection and name of the inspector.
- (3) If the violation is determined by the inspector to be unintentional, the owner shall have 72 hours to correct the violation. If the violation is uncorrected after this time, the provisions of rule 1200-4-2-.51 shall apply.

Authority: T.C.A. §65-4-116.

1220-4-2-.51 PENALTIES FOR VIOLATIONS

- (1) Upon determination that a violation exists and after a reasonable attempt to notify the owner, the Authority shall through its designated representative direct the local telephone company to disconnect the instrument in violation.
- (2) The local telephone company providing access to the instrument shall send the instrument owner a written notice, with a copy to the Authority, within 24 hours of the directive indicating the location of the disconnection. The notice shall also include the charges for reconnection upon correction of the violation as specified in the tariff of the local exchange company.

- (3) The Authority shall automatically revoke the authorization for any instrument found to be in intentional violation of Authority rules. If the owner disputes the violation, a hearing may be requested within a reasonable time before the Authority's designee. If no violation is found to exist or if the violation is shown to be unintentional, then the connection charges shall be refunded to the owner by the local exchange company and authorization shall be reinstated.

Authority: T.C.A. §65-4-116.

1220-4-2-.52 REAUTHORIZATION AFTER VIOLATION

- (1) After disconnection of a public pay telephone instrument for violation of Authority rules, the following procedures shall apply for reauthorization and reconnection of the instrument to provide this service:
 - (a) Temporary reconnection to the network may be ordered by the Chief of the Consumer Services and External Affairs Division or his/her designee at the request of the instrument owner for purposes of repair or verification of correction of the violation. Such reconnection may be temporarily maintained pending the filing of a new petition for authorization with the permission of the Chief.
 - (b) Authorization may be reissued upon receipt of a new petition for authorization which includes a notarized statement verifying correction and accompanied by the fee prescribed by TENN. CODE ANN. §65-2-103. Up-to-date data already on file with the Authority shall not have to be resubmitted. This petition shall be filed with the Authority within ten (10) days of notification of the violation to the instrument owner.

1220-4-2-.53 REVOCATION OF AUTHORIZATION TO PROVIDE INTRASTATE PUBLIC PAY TELEPHONE SERVICE

- (1) The Authority may refuse to reauthorize or may permanently revoke the authorization for any pay telephone instrument or instruments which have been disconnected for Authority rule violations on numerous occasions; or may refuse to re-authorize or permanently revoke the authorization of any pay telephone service owner or operator who has demonstrated a willful disregard for and an inability to comply with Authority regulation of pay telephone service. Revocation of authorization may also be ordered for any just cause.
- (2) Permanent revocation of authorization shall only be ordered by the Authority after opportunity for a hearing is provided in accordance with the provisions of TENN. CODE ANN. §65-2-106 and all applicable provisions of the state Administrative Procedures Act.

1220-4-2-.54 UNAUTHORIZED PUBLIC PAY TELEPHONE SERVICE

Any pay telephone service which is, not authorized for service by this Authority after July 1 of the year in which this rule takes effect shall be disconnected from the network by the local exchange company until the requisite authorization is obtained from the Authority.

Authority: T.C.A. §65-4-116.

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WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 04-15 AMENDMENT TO PROCLAMATION 04-11 WILDLIFE MANAGEMENT AREAS HUNTING SEASONS, LIMITS AND MISCELLANEOUS REGULATIONS

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following amendments to Proclamation 04-11 dealing with wildlife management areas hunting seasons, limits and miscellaneous regulations.

Amend Section I. General, Subsection A. Hunting Seasons, Number 2 (Page 1), by deleting “Cumberland Springs”.

Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Catoosa (Page 9), by deleting the wording for the deer bag limit on the “Nov. 11-13, Dec. 9-11 Deer/Boar (Gun-Archery)” Hunt and replacing it with the following wording:

Deer/Boar (Gun-Archery)	Two 3-day hunts. Nov. 11-13, Dec. 9-11. Station quota: Genesis 1,250; Bicolor 1,250. One deer, buck only. Boar – no limit, either sex.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Catoosa (Page 10), by deleting the wording under “Special Regulations” for ATVs and motorized bikes and replacing it with the following wording:

Special Regulations:	ATVs and motorized bikes are permitted only by individuals possessing the appropriate licenses and permits from the 4 th Saturday in August thru the Spring Squirrel season.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Ernest Rice, Sr. (Page 20), by deleting the season dates for the “Dec. 18-Jan. 7 Deer (Archery)” Hunt and replacing it with the following wording:

Deer (Archery)	Dec. 18-Jan. 9.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Flintville Hatchery (Page 21), by deleting “(Shotgun-Muzzleloader-Archery)” for the Deer (Young Sportsman) Hunt and replacing it with the following wording:

Deer (Young Sportsman) (Gun-Archery)	
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Foothills (Page 21), by deleting the season dates for “Opossum, Raccoon” hunting and replacing it with the following wording:

Opossum, Raccoon	Dec. 18-Feb. 15.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Henderson Island Refuge (Pages 24-25), by deleting the Feb. 1 season dates for “Squirrel, Quail, Rabbit, and Dog Training” seasons and replacing it with the following wording:

Squirrel	Sept. 1-10, Oct. 11-31, Feb. 2-28.
Quail, Rabbit	Feb. 2-28.
Dog Training	Feb. 2-28.

Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Kyker Bottoms Refuge (Page 28), by deleting the season dates for “Dove” hunting and replacing it with the following wording:

Dove	Sept. 4-5, 11-12, and Oct. 9-24.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Kyker Bottoms Refuge (Page 28), by deleting the season hunting hours for “Raccoon” hunting and replacing it with the following wording:

Raccoon	Sunset to 12:00 a.m.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Meeman-Shelby Forest State Park and Natural Area (Page 33), for “Dove, Opossum, Quail, Rabbit, Raccoon, Snipe, Squirrel, Woodcock” by deleting the sentence, “Squirrel hunting with dogs allowed during spring squirrel season.”

Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Natchez Trace State Forest North of I-40 (Page 35), by deleting the wording for the deer bag limit on the “Oct. 9-10, 30-31 Deer (Gun-Archery)(Young Sportsman)” Hunt and replacing it with the following wording:

Deer (Gun-Archery) (Young Sportsman)	One deer, either sex.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Natchez Trace State Forest South of I-40 (Page 35), by deleting the wording for the deer bag limit on the “Oct. 9-10, 30-31 Deer (Gun-Archery)(Young Sportsman)” Hunt and replacing it with the following wording:

Deer (Gun-Archery) (Young Sportsman)	One deer, either sex.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Moss Island (Page 35), by deleting the season dates for the “Dec. 18-Jan. 7 Deer (Archery)” Hunt and replacing it with the following wording:

Deer (Archery)	Dec. 18-Jan. 9.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Percy Priest, Unit I (Page 42), by deleting the “Dog Training” season dates and replacing it with the following wording:

Dog Training	Sept. 1-April 30.
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Amend Section II. Wildlife Management Areas and Refuges – Season and Bag Limits, Percy Priest, Unit I (Page 42), by deleting the “Bird and Rabbit Dog Trials” season dates and replacing it with the following wording:

Bird and Rabbit Dog Trials	Sept. 1-April 30.
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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 July 1, 2004 and ending July 30, 2004.

A handwritten signature in black ink that reads 'Riley C. Darnell'.

RILEY C. DARNELL
Secretary of State

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