

TAAAR



RILEY C. DARNELL

Secretary of State

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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

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 PETROLEUM UNDERGROUND STORAGE TANK BOARD

The Tennessee Petroleum Underground Storage Tank Board has to change the time and location of the Knoxville public hearing to receive public comments concerning amendments to the Rules of the Department of Environment and Conservation, Division of Underground Storage Tanks, Chapter 1200-1-15. The hearing in Knoxville has been rescheduled for 2:00 p.m. EST, on Tuesday, March 1, 2005, in the Community Room at the Knox County Health Department, 140 Dameron Avenue, Knoxville, Tennessee 37917. The other two hearings will be held as scheduled in the January TAR.

THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 DIVISION OF MENTAL RETARDATION SERVICES

NOTICE OF PUBLIC MEETING

The Division of Mental Retardation Services (DMRS) will hold a public meeting from 1:00 to 4:00 p.m. on March 1, 2005 to allow public comment regarding the adoption of the Community Services Provider Manual. The meeting will be held on the Clover Bottom Developmental Center campus in the Old Infirmary Building at One Cannon Way in the large conference room. The manual contains information and provider requirements pertaining to the provision of state-funded and Medicaid Waiver services operated under the oversight of DMRS. The draft manual was mailed to community service providers and posted on the DMRS website on January 18, 2005. The manual can be accessed on the DMRS website at: www.state.tn.us/dmrs. A revised version will be posted on the DMRS website on or before February 18, 2005. Copies of the manual will be available to providers and other interested parties upon request. The revised version will contain revisions made based on comments submitted since January 18, 2005 and revisions made during TennCare review of the manual. Written public comments will be accepted by mail or e-mail until close of business on March 1, 2005. Oral or written comments may be presented regarding the revised version of the manual during the public meeting. Additional information or copies of the manual may be requested from Sara Warren at (615) 741-6157. Comments should be mailed or e-mailed to the attention of:

Sara Warren
Division of Mental Retardation Services
500 Deaderick Street
Andrew Jackson Building, 15th Floor
Nashville, Tennessee 37243
E-mail: sara.warren@state.tn.us

THE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 9.25%.

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 March 2005 is 8.67 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 4.67 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
01-01	Jan 4, 2005	1200 Health Division of Emergency Medical Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-12-2 Procedures for Administering Chemical Agent Antidotes in Emergency Situations</i> 1200-12-2-.01 Introduction 1200-12-2-.02 Exposure 1200-12-2-.03 Procedures 1200-12-2-.04 Reports 1200-12-2-.05 Notification	Ernest Sykes OGC 20th Fl L&C Twr 401 Church St Nashville TN 37243-1539 615-532-0125	Mar 20, 2005
01-02	Jan 4, 2005	1200 Health Division of Emergency Medical Services	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-12-1 General Rules</i> 1200-12-1-.12 Authorization of Emergency Medical Aid	Ernest Sykes OGC 20th Fl L&C Twr 401 Church St Nashville TN 37243-1539 615-532-0125	Mar 20, 2005
01-03	Jan 10, 2005	1200 Health Bureau of Health Services Administration Community Services Section	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-11-4 Child Safety Fund</i> 1200-11-4-.01 Introduction 1200-11-4-.02 Definitions 1200-11-4-.03 Distribution of Funds 1200-11-4-.04 Eligibility 1200-11-4-.05 Accountability of Participating Entities 1200-11-4-.06 Participating Entity Responsibilities	Kassie Wiley Health OGC TN Twr, 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Mar 26, 2005
01-04	Jan 12, 2005	1200 Health Bureau of Health Services Administration Community Services Division	Proposed Rules	Amendments	<i>Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program</i> 1200-20-11-.02 Definitions 1200-20-11-.04 Eligibility	Kassie Wiley Health OGC 26th TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2005
01-07	Jan 14, 2005	1200 Health Tennessee Medical Laboratory Board Division of Health Related Boards	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-6-3 General Rules Governing Medical Laboratories</i> 1200-6-3-.09 Quality Control	Robert J. Kraemer OGC 20th Fl L&C Twr 401 Church St Nashville TN 37243-1539 615-532-0125	Mar 30, 2005

ANNOUNCEMENTS

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-11	Jan 14, 2005	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendment	<i>Chapter 1050-2 General Rules and Regulations Governing the Practice of Osteopathy 1050-2-.02 Fees</i>	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Mar 30, 2005
01-12	Jan 14, 2005	0940 Finance and Administration Mental Retardation Services	Public Necessity Rules	New Rules	<i>Chapter 0940-4-3 Methodology Utilized to Determine Payments to Service Providers (Rate Structure)</i> 0940-4-3-.01 Purpose 0940-4-3-.02 Scope 0940-4-3-.03 Definitions 0940-4-3-.04 Rate Setting Methodologies for Medical, Residential and Supported Living. 0940-4-3-.05 Special Needs Adjustments. 0940-4-3-.06 Rate Setting Methodologies for Day Services. 0940-4-3-.07 Rate Setting Methodologies for Clinical Services. 0940-4-3-.08 Rate Setting Methodologies for Respite and Personal Assistance Services. 0940-4-3-.09 Rate Setting Methodologies for Dental Services. 0940-4-3-.10 Rate Setting Methodologies for Personal Emergency Response Systems. 0940-4-3-.11 Rate Setting Methodologies for Specialized Medical Equipment	Larry Latham Stephen O. Tepley Finance and Administration 15th Fl A Jackson Bldg 500 Deaderick St Nashville TN 37243 (615) 253-6302 (615) 532-6526	Jan 14, 2005 through June 28, 2005

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-12, cont.					0940-4-3-.12 and Supplies. Rate Setting Methodologies for Environmental Modifications. 0940-4-3-.13 Rate Setting Methodologies for Vehicle Modifications		
01-13	Jan 19, 2005	1150 Occupational and Physical Therapy Examiners Committee of Physical Therapy	Rulemaking Hearing Rules	Amendment	<i>Chapter 1150-1 General Rules Governing the Practice of Physical Therapy</i> 1150-1-.08 Examinations	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	April 4, 2005
01-14	Jan 19, 2005	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (27-516)	Robert L. Powell Superfund 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615) 532-0916	April 4, 2005
01-15	Jan 19, 2005	0400 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (27-506)	Robert L. Powell Superfund 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615) 532-0916	April 4, 2005
01-19	Jan 25, 2005	1640 TN Student Assistance Corporation	Proposed Rules	Amendments	<i>Chapter 1640-1-19 Tennessee Education Lottery Scholarship Program</i> 1640-1-19-.01 Definitions 1640-1-19-.05 Eligibility – Tennessee Hope Scholarship 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship	Will Burns THEC Suite 1900 Parkway Twrs 404 J Robertson Pkwy Nashville TN 37243 (615) 741-7571	May 31, 2005

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-20	Jan 25, 2005	1640 TN Student Assistance Corporation	Public Necessity Rules	Amendments	<i>Chapter 1640-1-19 Tennessee Education Lottery Scholarship Program</i> 1640-1-19-.01 Definitions 1640-1-19-.05 Eligibility – Tennessee Hope Scholarship 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship	Will Burns THEC Suite 1900 Parkway Twrs 404 J Robertson Pkwy Nashville TN 37243 (615) 741-7571	Jan 25, 2005 through July 9, 2005
01-23	Jan 27, 2005	1200 Health Bureau Of Health Informatics Health Statistics	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-7-4 Ambulatory Surgical Treatment Center Data System</i> 1200-7-4-.01 Definitions 1200-7-4-.02 Purpose 1200-7-4-.03 Reporting Requirements 1200-7-4-.04 Required Data Elements 1200-7-4-.05 Submission Schedule 1200-7-4-.06 Penalty Assessment 1200-7-4-.07 Vendor Requirements 1200-7-4-.08 Processing and Verification 1200-7-4-.09 Data Availability 1200-7-4-.10 Confidential Information	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	April 12, 2005
01-24	Jan 27, 2005	1220 Tennessee Regulatory Authority	Rulemaking Hearing Rules	Amendment	1220-4-2-.56 Verification of Orders for Changes for Local and Long Distance	J. Richard Collier General Counsel TRA 460 J Robertson Pkwy Nashville TN 37343 (615) 741-2904, ext 170	April 12, 2005

THE TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY

NOTICE OF BEGINNING OF REVIEW CYCLE

*Applications will be heard at the **March 23, 2005** Health Services and Development Agency Meeting (except as otherwise noted)*

Denotes applications being placed on the **Consent Calendar which will be heard at the February 23, 2005 Health Services and Development Agency Meeting.
+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 **January 1, 2005**. 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 AND DESCRIPTION

Collierville Imaging and Diagnostic Center
95 Market Center Drive
Collierville (Shelby County), TN 38017
CN0410-093
Contact Person: Randal M. Meis, Business Manager
Phone No. 901-685-2696

The establishment of an outpatient diagnostic center (ODC), the initiation of magnetic resonance imaging (MRI) scanning services through the acquisition of a MRI scanner at a newly constructed outpatient facility. The Center proposes to provide other ODC services including computerized tomography (CT), radiology, mammography, and ultrasound. There are no other new services being initiated that require Certificate of Need approval.
\$ 13,591,003.00

Wilson County Outpatient Surgery Center
912 South Hartmann Drive
Lebanon (Wilson County), TN
CN0412-107
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

The establishment of a multi-specialty ambulatory surgical treatment center. The 13,200 square foot facility will have three (3) operating rooms and one (1) procedure room.
\$ 11,166,142.00

Cumberland Medical Center, Inc.
421 South Main Street
Crossville (Cumberland County), TN
CN0412-108
Contact Person: Ronald L. Bodary, Vice President, Professional Svc
Phone No. 931-456-7158

The initiation of a combination mobile positron emission tomography (PET) and computerized tomography (CT) imaging services. The project will provide leased mobile PET/CT services one (1) day per week on the hospital's campus. No other equipment will be purchased.

\$ 642,000.00

* Centennial Medical Center at Ashland City
313 North Main Street
Ashland City (Cheatham County), TN
CN0412-109
Contact Person: John Wellborn, Consultant
Phone No. 615-662-2022

The conversion of six (6) hospital beds to six (6) swing beds. CMCAC is seeking licensure as an eight (8) bed Critical Access Hospital and Medicare certification.

\$ 72,000.00

CONSENT CALENDAR

* Southern Hills Surgery Center
360 Wallace Road
Nashville (Davidson County), TN
CN0412-110
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

A change of site for the previously approved Certificate of Need No. CN0403-025 for the establishment of an ambulatory surgical treatment center (ASTC) at 520 Recovery Road, Nashville. The ASTC will contain three (3) operating rooms and two (2) procedure rooms and will be located in an existing building located at 360 Wallace Road, Nashville.

\$ 6,466,431.00

CONSENT CALENDAR

Neuro Spine ASC
1010 East Third Street
Chattanooga (Hamilton County), TN
CN0412-111
Contact Person: H. Lee Wood, Administrator
Phone No. 423-321-1125

The establishment of an ambulatory surgical treatment center (ASTC) for the purpose of performing spine surgery procedures of a lesser acuity. The ASTC will contain two (2) operating rooms and one (1) procedure room in leased space.

\$ 3,191,854.00

Baptist Memorial Hospital - Huntingdon
631 RB Wilson Drive
Huntingdon (Carroll County), TN
CN0412-113
Contact Person: Susan Breeden, CEO/Administrator
Phone No. 731-866-4461

The discontinuance of obstetric labor and delivery services. There will be no change in the licensed total bed count of 70 beds. No major medical equipment or new services are involved.

\$ 5,000.00

* St. Mary's Medical Center
900 East Oak Hill Avenue
Knoxville (Knox County), TN
CN0412-115
Contact Person: Jeremy H. Biggs, Assistant Vice President
Phone No. 865-545-7959

The conversion and redistribution of twelve (12) medical/surgical beds to adult psychiatric hospital beds to expand the existing Psychiatric Services from twenty-six (26) to thirty-eight (38) beds. The project will include renovation of 5,903 square feet.

\$ 240,000.00

CONSENT CALENDAR

Memphis Health Imaging, LLC
Park Place Centre, 1209 Ridgeway Road
Memphis (Shelby County), TN
CN0412-116
Contact Person: Robert M Limyansky, Partner
Phone No. 770-394-8465

The establishment of an outpatient diagnostic center (ODC) for a freestanding magnetic resonance imaging (MRI) unit. Major medical equipment includes a Fonar Stand-Up MRI unit. No beds are involved.

\$ 3,885,541.00

Knoxville Health Imaging, LLC
266 Peters Road
Knoxville (Knox County), TN
CN0412-117
Contact Person: Robert M Limyansky, Partner
Phone No. 770-394-8465

The establishment of an outpatient diagnostic center (ODC) for a freestanding magnetic resonance imaging (MRI) center. Major medical equipment includes a Fonar Stand-Up MRI unit. No beds are involved.
\$ 3,813,299.00

Centennial Medical Center
2300 Patterson Street
Nashville (Davidson County), TN
CN0412-118
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

The acquisition of a fourth (4th) magnetic resonance imaging (MRI) unit, relocation of the existing MRI to the main hospital, and the remodeling of the existing MRI areas within the Centennial Imaging Center (CIC) facility. The 615-licensed hospital beds will remain unchanged.
\$ 3,650,685.00

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Emergency rules covering the procedures of assessment and appeal rights of penalties issued by the Workers' Compensation Division, chapter 0800-2-13 Penalty Program, 11 T.A.R. (November 2004) - Filed October 13, 2004; effective though March 27, 2005. (10-18)

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PROPOSED RULES

TENNESSEE DEPARTMENT OF HEALTH - 1200 BUREAU OF HEALTH SERVICES ADMINISTRATION COMMUNITY SERVICES DIVISION

CHAPTER 1200-20-11 RULES AND REGULATIONS GOVERNING THE STATE CONRAD J-1 VISA WAIVER PROGRAM

Presented herein are proposed amendments of the Department of Health, Bureau of Health Services Administration, Community Service Division, 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, Community Services Division, 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 Community Services Division on the Sixth Floor of the Cordell Hull Building, 425 5th 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: Alisa Malone, Sixth Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37247, (615) 741-4545.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1200-20-11-.02, Definitions, is amended by adding the following language after paragraph (8) entitled “Managed Care Organization (MCO),” and renumbering the remaining paragraphs accordingly, so that, as amended, the paragraph shall read:

- (9) Medicare Dependent Hospital – a federally designated hospital that is a small rural hospital for which Medicare patients comprise a significant percentage of their patients and their revenues.

Authority: *T.C.A. §§4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.*

Newly-numbered Paragraph (13) entitled “Physician specialist” of Rule 1200-20-11-.02, Definitions, is amended by adding the language “Emergency Medicine” after “Metabolism,” adding “Hospitalists” after “Hematology,” adding “Neurology” after “Nephrology,” and deleting the language “(subject to the restrictions noted herein),” so that as amended, the paragraph shall read:

- (13) Physician specialist – a physician who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Emergency Medicine, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery. Each applicant must be supported by a sponsoring employer.

Authority: T.C.A. §§ 4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Rule 1200-20-11-.02, Definitions, is amended by adding the following language after newly-numbered paragraph (14) entitled “Rural areas” and renumbering the remaining paragraphs accordingly, so that, as amended, the paragraph shall read:

- (15) Rural Hospital – a federally designated hospital meeting the guidelines for placement of primary care physicians. Rural Hospitals which are located in counties containing federally designated health professional shortage areas (HPSAs) and/or medically underserved areas (MUAs), either of which must also be located within the top thirty (30) state designated health resource shortage areas (HRSAs) for TennCare, primary care, obstetrics or pediatrics.

Authority: T.C.A. §§4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Paragraph (1) of Rule 1200-20-11-.04, Eligibility, is amended by adding the language “Emergency Medicine” after “Critical Care Medicine,” adding “Hospitalists” after “Hematology,” adding “Neurology” after “Nephrology,” and deleting the language “(subject to the restrictions noted herein),” so that as amended, the paragraph shall read:

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine, or a physician specialist who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Emergency Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery. Each applicant must be supported by a sponsoring employer.

Authority: T.C.A. §§4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Rule 1200-20-11-.04, Eligibility, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Newly-numbered Paragraph (3) of Rule 1200-20-11-.04, Eligibility, is amended by deleting the paragraph in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

- (3) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital or a Medicare dependent hospital or a rural hospital meeting the guidelines for placement of a primary care physician either of which must be located in a HPSA or MUA. The top twenty non-psychiatric hospital list will be updated on an annual basis. Each physician specialist must agree to practice their speciality in affiliation with that hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists have not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. No more than one-third of the specialist slots are granted in an urban HPSA from October 1 to June 30 of each year. If the full complement of slots permitted by the federal law has not been committed by June 30, the percentage limitations on the number of slots allocated to specialty physicians and on the placement of specialty physicians, set forth above, shall no longer be applicable. After June 30, all slots permitted by the federal law shall be opened to all eligible sponsoring employers for primary care physicians and specialist physicians as previously described, for the final quarter of the year. During the final quarter, priority for the specialist slots is given to specialists but primary care provider applications will be accepted if specialist slots are available and no other specialist provider application has been received and deemed eligible. Health care practitioners who are placed must provide medical care to underserved Tennesseans.

Authority: *T.C.A. §§4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.*

Newly-numbered Paragraph (5) of Rule 1200-20-11-.04, Eligibility, is amended by adding the language “or a Medicare dependent hospital or a rural hospital meeting the guidelines for placement of a primary care physician” after “Sole Community hospital,” so that, as amended, the paragraph shall read:

- (5) The Department will facilitate the placement of J-1 primary care physicians only in rural areas of the State. The Department will facilitate the placement of physician specialists in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital or a Medicare dependent hospital or a rural hospital meeting the guidelines for placement of a primary care physician either of which must be located in a HPSA or MUA. Physician specialists who request placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all the rules and regulations herein specific to primary care physicians.

Authority: *T.C.A. §§4-5-202, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.*

The proposed rules set out herein were properly filed in the Department of State on the 12th day of January, 2005, and pursuant to the instructions set out above, and in the absence of an appropriate petition calling for a rulemaking hearing, will be effective on the 31st day of May, 2005. (01-04)

THE TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-19

TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM

Presented herein are amended rules of the Tennessee Student Assistance Corporation submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue to the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Suite 1950 of Parkway Towers located at 404 James Robertson Parkway, Nashville, Tennessee 37243 and in the Department of State, Administrative Procedures Division, Eighth Floor, William R. Snodgrass Tower, 312 Eighth 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 these proposed rules, contact Lora Daniels, Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, telephone 615-741-1346.

AMENDMENTS

The text of the amended proposed rules is as follows:

Paragraph (49) of Rule 1640-1-19-.01, Definitions, is amended by adding a new paragraph (49), and renumbering the subsequent definitions following in this section accordingly, so that paragraph (49) shall read:

- (49) **Weighted Grade Point Average:** Grade point average on a 4.0 scale calculated with additional quality points added to the unweighted grade point average for advanced placement, honors, and dual enrollment courses as those courses are defined by the high school. The corporation shall calculate the weighted grade point average by adding 0.5 quality point to the grade of any honors or dual-enrollment course and by adding 1.0 quality point to the grade of any advanced placement or advance honors course.

Authority: T.C.A.. §§49-4-902 and 49-4-924.

Subpart (ii) of Rule 1640-1-19-.05(2)(a)1, Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language so that subpart (ii) shall read:

- (ii) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

Authority: T.C.A.. §§49-4-907 and 49-4-924.

Subpart (ii) of Rule 1640-1-19-.05(2)(b)1, Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language so that subpart (ii) shall read:

- (ii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date.

Authority: T.C.A.. §§49-4-908 and 49-4-924.

Part 1 of Rule 1640-1-19-.07(1)(a), Eligibility – General Assembly Merit Scholarship, is amended by deleting the word “unweighted” and replacing it with the word “weighted”, so that Part 1 shall read:

1. Achieve a final overall weighted high school grade point average of at least 3.75;

Authority: T.C.A.. §§49-4-916 and 49-4-924.

Part 1 of Rule 1640-1-19-.07(1)(c), Eligibility – General Assembly Merit Scholarship, is amended by deleting the word “unweighted” and replacing it with the word “weighted”, so that Part 1 shall read:

1. Achieved a final overall weighted high school grade point average of at least 3.75;

Authority: T.C.A.. §§49-4-916 and 49-4-924.

The proposed rules set out herein were properly filed in the Department of State on the 25th day of January, 2005, 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 31st day of May, 2005. (01-19)

PUBLIC NECESSITY RULES

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

- 0180 - Department of Financial Institutions - Compliance Division - Public necessity rules pertaining to mortgage lending, loan servicing and loan brokering, rule 0180-17-1-.10 Fees, 10 T.A.R. (October 2004) - Filed September 29, 2004; effective through March 13, 2005. (09-26)
- 1200 - Department of Health - Community Services Division - Public necessity rule pertaining to Conrad J-1 Visa Waiver physicians, Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program, 11 T.A.R. (November 2004) - Filed October 22, 2004; effective through April 5, 2005. (10-39)
- 1640 - TN Student Assistance Corporation - Public necessity rules providing changes to Tennessee Code Annotated Title 49, Chapter 4, Part 9, chapter 1640-1-19 Tennessee Education Lottery Scholarship Program, 11 T.A.R. (November 2004) - Filed October 21, 2004; effective April 4, 2005. (10-38)

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATIONS - 0620 DIVISION OF MENTAL RETARDATION SERVICES

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

This statement is made in accordance with §4-5-209(3) of the *Tennessee Code Annotated* and Rule 1360-1-2-.01(5)(c) of the *Official Compilation Rules and Regulations of the State of Tennessee (O.C.R.R.S.T.)*. It is the finding by the Department of Finance and Administration, Division of Mental Retardation Services, that the foregoing rules of the Methodology Utilized to Determine Payments to Service Providers (Rate Structure) should be effective immediately based upon public necessity.

Pursuant to an agreement between the Division of Mental Retardation Services (Division) and the Bureau of TennCare, these agencies have worked extensively over the past several years to revise the ratemaking system currently in effect for community service providers under agreement with the Division. The result of this effort has been the development of a methodology for determining the funding mechanism/amounts to be paid to the Division's contractors who aid the mentally retarded in Tennessee.

The rates generated by this methodology are required as a condition of the Division's funding waivers from the Center for Medicaid/Medicare Services (CMS). These waivers are the means by which the Division receives via the Federal Medicaid (TennCare) Program up to seventy percent (70%) of its monetary resources. The delay in promulgating these rules utilizing the ordinary rulemaking procedures as found in Title 4, Chapter 5 of the *Tennessee Code Annotated*, as well as Chapter 1360 of the *O.C.R.R.S.T.* could cause the loss of federal funding for these services. Furthermore, without the rates resulting from this process, the Division will be unable to compensate its contracted providers. These persons and organizations furnish necessary - and in some cases critical services - to residents across the State of Tennessee who have needs for assistance due to mental retardation.

The Division of Mental Retardation Services will send a written notice to those persons it believes will be effected by these rules within ten (10) working days of the date their filing.

For a copy of this public necessity rule contact: Carolyn Griffith, MR Specialist 3, Division of Mental Retardation Services, Fifteenth Floor, Andrew Jackson Building, 500 Deaderick Street, Nashville, Tennessee 37243, (615) 532-6526.

Stephen O. Tepley, General Counsel
Division of Mental Retardation Services
TN Department of Finance and
Administration

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATIONS
DIVISION OF MENTAL RETARDATION SERVICES**

NEW RULES

CHAPTER 0940 – 4 – 3

METHODOLOGY UTILIZED TO DETERMINE PAYMENTS TO SERVICE PROVIDERS (RATE STRUCTURE)

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0940-4-3-.01 PURPOSE.

This chapter establishes a rate setting methodology for Residential and Day Services that are provided through the Department of Finance and Administration – Division of Mental Retardation Services.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.02 SCOPE.

These rules apply to the procedures and practices used to establish rates of payment for Residential and Day Services acquired by the Department of Finance and Administration – Division of Mental Retardation Services for or on behalf of those persons served by it under the provisions of Title 33 of the *Tennessee Code Annotated* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23*, dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.03 DEFINITIONS.

As used in these rules, unless the context indicates otherwise, the terms listed below have the following meaning:

- (1) “Administrative Costs” are the allowable percentage of the service rate that includes the costs for administrative salaries and benefits, home office costs, office supplies and printing, phone and other communication, travel and conference, advertising, professional services, licensure and dues, legal and accounting fees, interest, depreciation, occupancy, general liability insurance, equipment and administrative vehicles.
- (2) “Base Rates” are the rates established using the base rate setting methodology.
- (3) “Direct Service Costs” are the costs for direct service staff salaries and benefits, overtime, direct supervision wages and benefits, contracted direct service/temporary help, recruiting/advertising, drug testing, background checks, Hepatitis B and TB tests, and other costs for direct service staff bonuses and employee appreciation events.
- (4) “Full Time Equivalent (FTE)” means the total cost for one direct support staff for forty hours. It includes direct service costs, non-direct program costs, administrative costs, and twenty (20) days of payment to cover service recipient absences.
- (5) “Non-Direct Program Costs” is the allowable percentage of the service rate that includes the costs for multi-site supervisors and benefits, training, off site computer/file storage, depreciation/amortization, internal monitoring, agency case management, personal funds management, healthcare oversight, specific assistance to individuals-room and board, specific assistance to individuals-non-room and board, transportation of individuals, staff travel, facility maintenance, facility supplies, habilitation supplies.
- (6) “Rate” is the amount paid per person to approved service providers for each unit of a DMRS service that is provided. A unit may be a portion of an hour, an hour, a day, a month, an item or a job, depending on the type of service.
- (7) “Rate Adjustment” is an increase(s) to the base rates that may be across the board adjustments for costs of living or increases for specific purposes that are appropriated by the Tennessee legislature.
- (8) “Rate Levels” are the series of rates for residential and day services that are based on the intensity of a service recipient’s needs and the size or site of the service setting.
- (9) “Rate Level Factor” is the multiplier applied to the FTE daily cost that reflects intensity of support need and number of persons in the home. Rate level factors were based on licensure requirements for staffing and professional judgement of estimated hours of direct support staff assistance required for individuals at each rate level.

- (10) “Rate Setting Methodology” is the manner in which the base rates for residential and day services are calculated or determined.
- (11) “Special Needs Adjustment” is an additional payment that may be added to the residential rate for an individual when certain specified criteria are met.
- (12) “Uniform Cost Report” is the mandatory annual report completed by providers of residential and/or day services that is submitted to the Division of Mental Retardation Services. The Uniform Cost Report is completed in the manner and in a format required by the Division.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.04 RATE SETTING METHODOLOGIES FOR MEDICAL, RESIDENTIAL AND SUPPORTED LIVING.

- (1) Medical Residential, Residential Habilitation and Supported Living (Shift-Staffed) Model.
 - (a) For residential services that are shift-staffed, staff coverage is calculated as follows:
 - 1. 138 hours per week—5 days at 18 hours per day and 2 days at 24 hours per week.
 - 2. 3.45 Full Time Equivalents (FTE) are required to provide this coverage.
 - 3. The unit of service for these residential services is a day.
 - (b) The calculation of the daily cost per person for a Full Time Equivalent (FTE) is:
 - 1. Hourly direct support staff wage plus % for benefits for the hourly cost for direct support staff.
 - 2. Annual salary for direct supervision plus % for benefits divided by four residents equals the cost per person per year.
 - 3. Divide the cost per person per year by 52 weeks and by 138 hours to arrive at the hourly cost for supervision.
 - 4. Add together the hourly cost for direct support staff and the hourly cost for supervision.
 - 5. Multiply the result from Step four by one and the % allowed (e.g. multiply by 1.20 for 20%) for non-direct program costs.
 - 6. Multiply the result from Step five by one and the % allowed (e.g. multiply by 1.125 for 21.5%) for administrative costs to arrive at the hourly cost for coverage.
 - 7. Multiply the hourly cost for an FTE by 138 hours to arrive at the weekly cost for coverage.
 - 8. Divide the weekly cost by 7 days to arrive at the daily cost for coverage.
 - 9. Divide the daily cost by 3.45 FTEs to arrive at the daily FTE cost per person.

- (c) Calculation for the daily rate per person is:
1. For each Rate Level and Home Size, multiply the daily per person FTE cost by the rate level factor.
 2. Divide the result of Step one by the facility size.
 3. Multiply the result of Step two by 385 (to allow for 20 absent days).
 4. Divide the result of Step three by 365 to arrive at the daily rate.
- (2) Supported Living-Companion Model
- (a) For non-shift staffed, companion model the unit of service is a day. The calculations are as follows:
- (b) Calculate the daily rate per person.
1. Multiply the annual stipend by one and the % for benefits.
 2. Add the companion room and board allowance.
 3. Add the number of hours per year at the hourly rate for relief staff divided by 365 days.
 4. Add costs in steps one through three.
 5. Multiply the result of step four by one and the percent for non-direct program costs.
 6. Multiply the result of step five by one and the percent for administrative costs.
 7. Divide the result of step six by 365.
 8. Multiply the result of step seven by 385 (to allow for 20 absent days).
 9. Divide the result of step eight by 365 to arrive at the daily rate.
- (3) Family Model for Residential Services
- (a) Family Model Residential Services are those provided in a family home under the supervision of a residential services agency. The unit of service is a day.
- (b) Calculate the daily rate per person.
1. Multiply the annual stipend by one and the % for benefits.
 2. Add the number of hours per year at the hourly rate for relief staff divided by 365 days.
 3. Add direct supervision at annual salary plus % for benefits divided by 10 individuals divided by 365 days.
 4. Add costs in steps 1 through 3 above.

5. Multiply the result of step four by one and the percent for non-direct program costs.
 6. Multiply the result of step five by one and the percent for administrative costs.
 7. Divide the result of step six by 365 days.
 8. Multiply the result of step seven by 385 days (to allow for 20 absent days).
 9. Divide the result of step eight by 365 days to arrive at the daily rate.
- (4) Semi-Independent Living Model
- (a) Semi-Independent Living services are residential services provided to individuals who require limited support. The unit of service is a month.
 - (b) Calculate the monthly rate per person.
 1. Multiply the hours per month amount for direct support staff by one and the % for benefits.
 2. Add direct supervision at annual salary plus % for benefits divided by 10 individuals divided by 12 months.
 3. Add one hundred and twenty dollars (\$120.00) for transportation
 4. Add one hundred and fifty-five dollars (\$155.00) per month for case management/program supervision.
 5. Multiply the results of steps one through four by one and the percent for administrative costs.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.05 SPECIAL NEEDS ADJUSTMENTS.

- (1) An adjustment of an additional sixty dollars (\$60.00) per day is available to Residential Habilitation and Supported Living Levels 1-4, for homes with 1-4 persons.
- (2) An adjustment of twenty dollars (\$20.00) per day is available to Residential Habilitation homes with 5 or more people except for reasons of a vacancy in the home.
- (3) This adjustment may be used for additional staff coverage or higher wages for staff.
- (4) A special needs adjustment does not change the rate level designated for the individual, but adjusts the rate level as a result of one or more of the following circumstances:
 - (a) The individual has a history of significant behavioral or psychiatric problems that are now not apparent due to the design or intensity of services being received or the person has a situation that is unique and results in the need for additional resources.
 - (b) Less intensive services will likely result in recurrence of previous problems. The Regional Office must review the special adjustment at least annually.

- (c) The individual is in circumstances that are time limited but that require support(s) at a higher level than described by the Level. (For example, the person has had a serious illness, injury, or surgery that requires more support while he is recovering than the Level describes.) A special adjustment may be approved for up to ninety (90) days and may be extended for an additional ninety (90) days.
- (d) The person needs a roommate and requires a special adjustment until one moves in. A special adjustment may be approved for up to ninety (90) days and may be extended for an additional ninety (90) days.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.06 RATE SETTING METHODOLOGIES FOR DAY SERVICES.

- (1) The unit of service is a day except for Follow Along which is a month.
- (2) For day services staff coverage is calculated for 6 hours per day for 243 days per year.
- (3) The cost models were calculated with the following direct service cost factors:
 - (a) Non-direct program costs at twenty percent (20%).
 - (b) Administrative costs at twelve and one-half percent (12.5%).
 - (c) Transportation costs per day per person.
 - (d) Twenty (20) leave days.
- (4) Rate level factor based on service setting and intensity of need.
- (5) Day Service settings include day habilitation facilities, community locations, and community employment locations.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.07 RATE SETTING METHODOLOGIES FOR CLINICAL SERVICES.

- (1) The unit for therapy and nursing services is a quarter hour.
- (2) The Unit for behavioral services is an hour.
- (3) The rate for clinical services is based on comparison with national rates of payment and comparable rates of payment within the State for like services.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.08 RATE SETTING METHODOLOGIES FOR RESPITE AND PERSONAL ASSISTANCE SERVICES.

- (1) The unit for respite and personal assistance services may be hourly or daily rates.
- (2) The rates are calculated based on hourly direct service costs and a percentage for administrative costs.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.09 RATE SETTING METHODOLOGIES FOR DENTAL SERVICES.

Dental Services rates are those set by TennCare for reimbursement of Medicaid funded dental care.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.10 RATE SETTING METHODOLOGIES FOR PERSONAL EMERGENCY RESPONSE SYSTEMS.

Rates paid are the usual and customary rates for installation and monitoring set by the company providing the service.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.11 RATE SETTING METHODOLOGIES FOR SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES.

Rates paid are the usual and customary costs for the equipment or supplies.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.12 RATE SETTING METHODOLOGIES FOR ENVIRONMENTAL MODIFICATIONS

Rates paid are the usual and customary costs for the modification.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.13 RATE SETTING METHODOLOGIES FOR VEHICLE MODIFICATIONS.

Rates paid are the usual and customary costs for the modification.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.14 RATE SETTING METHODOLOGIES FOR VISION SERVICES.

Rates paid are the usual and customary charges for examination and corrective lenses.

Authority: T.C.A. § 33-1-309(d) and Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23 dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

The Public Necessity Rules set out herein were properly filed in the Department of State on the 14th day of June, 2005, and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 28th day of June, 2005. (01-12)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Public Chapter 840, Acts of 2004 amended Tennessee Code Annotated, Title 49, Chapter 4, Part 9 relative to the Tennessee Lottery Scholarship Program. The portions of the public chapter went into effect on December 1, 2004 and the statute it amended requires the Tennessee Higher Education Commission to promulgate rules to effectuate the provisions of the acts. Public necessity rules are necessary to address the application of the public chapter at the various institutions for the 2005 Spring semester.

For a copy of these public necessity rules contact Lora Daniels, Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, telephone 615-741-1346.

Richard G. Rhoda, Interim Executive Director
Tennessee Student Assistance Corporation

**PUBLIC NECESSITY RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-1-19
TENNESSEE EDUCATIONAL LOTTERY SCHOLARSHIP PROGRAM**

AMENDMENTS

The text of the amended proposed rules is as follows:

Paragraph (49) of Rule 1640-1-19-.01, Definitions, is amended by adding a new paragraph (49), and renumbering the subsequent definitions following in this section accordingly, so that paragraph (49) shall read:

- (49) **Weighted Grade Point Average:** Grade point average on a 4.0 scale calculated with additional quality points added to the unweighted grade point average awarded for advanced placement, honors, and dual enrollment courses as those courses are defined by the high school. The corporation shall calculate the weighted grade point average by adding 0.5 quality point to the grade of any honors or dual-enrollment course and by adding 1.0 quality point to the grade of any advanced placement or advance honors course.

Authority: *T.C.A. §§49-4-902 and 49-4-924.*

Subpart (ii) of Rule 1640-1-19-.05(2)(a)1, Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language so that subpart (ii) shall read:

- (ii) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

Authority: T.C.A.. §§49-4-907 and 49-4-924.

Subpart (ii) of Rule 1640-1-19-.05(2)(b)1, Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language so that subpart (ii) shall read:

- (ii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date.

Authority: T.C.A.. §§49-4-908 and 49-4-924.

Part 1 of Rule 1640-1-19-.07(1)(a), Eligibility – General Assembly Merit Scholarship, is amended by deleting the word “unweighted” and replacing it with the word “weighted”, so that Part 1 shall read:

1. Achieve a final overall weighted high school grade point average of at least 3.75;

Authority: T.C.A.. §§49-4-916 and 49-4-924.

Part 1 of Rule 1640-1-19-.07(1)(c), Eligibility – General Assembly Merit Scholarship, is amended by deleting the word “unweighted” and replacing it with the word “weighted”, so that Part 1 shall read:

1. Achieved a final overall weighted high school grade point average of at least 3.75;

Authority: T.C.A.. §§49-4-916 and 49-4-924.

The public necessity rules set out herein were properly filed in the Department of State on the 25th day of January, 2004, and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 9th day of July, 2005. (01-20)

RULEMAKING HEARINGS

BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 28th day of April, 2005.

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0460-2-.01, Licensure Process – By Exam and By Criteria (Reciprocity), is amended by adding the following language as new subparagraph (1) (h) and renumbering the remaining subparagraphs accordingly:

- (1) (h) An applicant shall cause to be submitted to the Board’s administrative office directly from the vendor identified in the Board’s licensure application materials, the result of a criminal background check.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.*

Rule 0460-2-.02, Dual Degree Licensure Process, is amended by adding the following language as new paragraph (11) and renumbering the remaining paragraphs accordingly:

- (11) An applicant shall cause to be submitted to the Board’s administrative office directly from the vendor identified in the Board’s licensure application materials, the result of a criminal background check.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.*

Rule 0460-2-.03, Limited and Educational Limited Licensure Process, is amended by adding the following language as new subparagraph (1) (i) and renumbering the remaining subparagraph accordingly:

- (1) (i) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-3-.01, Licensure Process, is amended by adding the following language as new paragraph (9) and renumbering the remaining paragraphs accordingly:

- (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-3-.02, Criteria Approval Licensure Process (Reciprocity), is amended by adding the following language as new paragraph (9) and renumbering the remaining paragraphs accordingly:

- (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-3-.03, Educational Licensure Process, is amended by adding the following language as new paragraph (9) and renumbering the remaining paragraphs accordingly:

- (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-4-.02, Registration Process, is amended by deleting subpart (8) (b) 1. (i) in its entirety and substituting instead the following language, so that as amended, the new subpart (8) (b) 1. (i) shall read:

- (8) (b) 1. (i) Documentation of registration, or its equivalent, as a dental assistant in another state as required by paragraph (8); and

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.

Rule 0460-4-.02, Registration Process, is amended by adding the following language as new paragraph (7) and renumbering the remaining paragraphs accordingly:

- (7) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's registration application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-124.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of January, 2005. (01-21)

STATE BOARD OF EDUCATION - 0520

**CHAPTER 0520-1-6
CHILD NUTRITION PROGRAMS**

There will be a hearing before the State Board of Education to consider the promulgation of rules pursuant to Tennessee Code Annotated, Section 49-6-2307. 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 meeting room on the first floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN, 37243-1050 at 9:30 a.m. CST on the 17th day of March, 2005. Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the State Board of Education to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the State Board of Education to determine how it may reasonably provide such aid or service. Initial contact may be made with the State Board of Education ADA Coordinator, Vicki Burger, at 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

For a copy of this notice of rulemaking hearing, contact: Mary Jo Howland, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

SUBSTANCE OF PROPOSED RULES

The text of the proposed rule is as follows:

NEW RULE

TABLE OF CONTENTS

0520-1-6-.01	General Regulations	0520-1-6-.04	Minimum Nutritional Standards for Individual
0520-1-6-.02	Schools Eligible to Receive Federal Assistance for Child Nutrition Programs		Food Items Sold to Pupils in Grades K-8
0520-1-6-.03	Minimum Requirements for Each Participating School		

0520-1-6-.04 MINIMUM NUTRITIONAL STANDARDS FOR INDIVIDUAL FOOD ITEMS SOLD TO PUPILS IN GRADES K-8

- (1) Introduction.

The federal Child Nutrition Reauthorization Act, which applies to all schools who participate in the federal school lunch program, requires every school to adopt a wellness plan by June 30, 2006. As a component of a locally adopted wellness program, these nutritional guidelines are minimal and local programs may adopt more stringent guidelines.

The local school board of education at a minimum shall develop a district policy that ensures the implementation and assigns responsibility for compliance with these rules.

Within one year of the revision of the Dietary Guidelines for Americans (DGA), the State Board of Education, in consultation and cooperation with the Department of Education and the Department of Health, shall review these rules.

(2) Definitions.

- (a) School Day: Starting 45 minutes before the beginning of the official school day and continuing until 30 minutes after the official school day ends.
- (b) Low Calorie Drink: Drinks that contain no more than 15 calories per serving.
- (c) Serving: One serving of beverage shall not exceed 12 fluid ounces, except water.
- (d) Foods/beverages of Minimal Nutritional Value: The United States Department of Agriculture (USDA) School Food and Nutrition Service definition that includes soda, gum, hard candies, marshmallow candies, licorice and candy coated popcorn.

(3) Application of Nutrition Standards

These standards are developed for foods and beverages sold or offered for sale in schools that teach students K-8 during the school day. These standards do not apply to those foods served as a federally reimbursable meal to pupils. These standards apply to food items sold or offered for sale during the school day including but not limited to school stores items, fund raising items, a la carte items, vending machine items, snack bars items, etc. It is strongly recommended that effort be given to make reimbursable meals to meet these standards.

(4) Nutritional requirements:

(a) Fruits and Non-Fried Vegetables

Fruits and vegetables may be fresh, frozen, canned or dried, and they must be found in the Food Buying Guide for Child Nutrition Programs. (<http://schoolmeals.nal.usda.gov/FBG/2003FBG/%20Section%202.pdf>).

Examples of products that cannot be sold as a fruit or vegetable include:

1. Snack-type foods made from vegetables or fruits, such as potato chips, and banana chips;
2. Pickle relish, jam, and jelly; and
3. Tomato catsup and chili sauce.

(b) Approved Beverages

1. Reduced fat (2%), lowfat (1%), skim/nonfat fluid milk meeting State and local standards for pasteurized fluid milk and/or USDA approved alternative dairy beverages;*
2. 100% fruit and vegetable juices; and
3. Water (non-flavored, non-sweetened, and non-carbonated).

Portion sizes for beverages shall not exceed 12 oz, except for water.

* There are no USDA approved alternative dairy beverages at this time. Public Law 108-265 (Child Nutrition Program Reauthorization) authorizes the Secretary of Agriculture to establish nutritionally equivalent non-dairy beverages by July 1, 2005.

(c) All other individual food item portions shall meet the following standards:

1. Calories from total fat must be at or below 35%, excluding nuts, seeds, and nut butters. This is determined by dividing the calories from total fat by the total calories and multiplying by 100. If calories from fat are not available, multiply the grams of fat by 9 to equal calories from fat.
2. Calories from saturated fat must be at or below 10%. This is determined by dividing the calories from saturated fat by the total calories and multiplying by 100. If calories from saturated fat are not available, multiply the grams of saturated fat by 9 to equal calories from saturated fat.
3. Total Sugar must be at or below 35% by weight. This is determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This includes both naturally occurring and added sugars. This limit does not include fruits and vegetables as defined above.
4. Portion size for a la carte sales in the school cafeteria are not to exceed the portion size of a food served in the NSLP/SBP; for vending sales, the item package or container is not to exceed 200 calories.

(5) Evaluation of Effectiveness

It is recommended that school district staff, college interns, Wellness Coordinator, Department of Health or other outside agencies, and/or community members monitor the effects of this policy during the next five years. Measures might include:

- (a) Participation rates in school meal programs,
- (b) Student satisfaction surveys to monitor the effect that the consumption of healthy snacks has on children's health, behavior and school performance (and to monitor satisfaction with snack choices),
- (c) Parent satisfaction surveys to monitor effects on children's health, behavior and school performance (and to monitor satisfaction with snack choices),
- (d) Frequency and types of health problems on School Nurse logs,
- (e) Frequency and types of mental health/behavioral problems on counselor logs,

- (f) Incidence of student behavior infractions,
- (g) Teacher surveys of students' classroom behavior, attention span, memory, and
- (h) Test scores.

Authority: T.C.A. §49-6-2307.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005 (01-30)

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF REMEDIATION**

There will be a hearing conducted by the Division of Remediation on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Paris City Hall, 100 N. Caldwell, Paris, TN 38242 on March 22, 2005 at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
Henry County (40)	
40-505	Wright, Carl, Septic Service Paris, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of January, 2005. (01-05)

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

There will be a hearing conducted by the Division of Remediation on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at Tennessee Department of Environment and Conservation, Memphis Field Office, Meeting Room, 2510 Mt. Moriah, Memphis, TN 38115 on March 21, 2005, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
Shelby County (79)	
79-785	LaRoche Industries Memphis, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of January. (01-18)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DRYCLEANER ENVIRONMENTAL RESPONSE BOARD
DIVISION OF SUPERFUND

There will be a hearing before the staff of the Drycleaner Environmental Response Board Tennessee Department of Environment & Conservation, Division of Superfund, Drycleaner Environmental Response Program, to receive public comments regarding the promulgation of amendments to Rule 1200-1-17, Drycleaner Environmental Response Program, pursuant to Tennessee Code Annotated 68-217-101 et. seq., the "Tennessee Drycleaner's Environmental Response Act". 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 4th floor Conference Room of the L&C Annex located at 401 Church Street, Nashville, Tennessee at 1:30 PM Central Time on the 17th day of March, 2005. Written comments will be considered if received by the close of business, April 2, 2005, in the office of Steve Goins, Division of Superfund, 401 Church Street, L&C Annex, 4th Floor, Nashville, TN 37243-1538.

Individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Department of Environment & 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 the hearing date to allow time to provide such aid or services. Initial contact may be made with the Department's ADA Coordinator, 7th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, and (615) 532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298).

SUBSTANCE OF PROPOSED RULE

Rule 1200-1-17-.05 is amended by adding paragraph (12) so that, as amended, Rule 1200-1-17-.05(12) shall read:

(12) Non-Reimbursement Review

- (a) The program may provide oversight of registered facilities requesting review, which will not be seeking Fund reimbursement. Prior to issuance of a Response Complete Letter the program will ensure that the investigative and remedial activities were comparable to sites participating in the program for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations. The requester shall submit a written request to the program for review/oversight and shall document or include the following: BMP compliance, the facility is current with all fees, surcharges, and penalties, the work has or will be performed by a Drycleaner Approved Contractor (DCAC), a signed waiver of eligibility for cost reimbursement from the Drycleaner Fund, and that all pertinent documents/reports have been submitted to the program.
- (b) The program may provide oversight of unregistered facilities requesting review, which will not be seeking Fund reimbursement. The program may deny any request for a review that is not reasonable or cost effective. Prior to issuance of a Response Complete Letter the program will ensure that the investigative and remedial activities were comparable to sites participating in the program for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations.

The requester shall submit a written request to the program for review/oversight and shall include a signed waiver of eligibility for cost reimbursement from the Drycleaner Fund and shall submit all pertinent documents/reports related to environmental activity at the site. In addition the requester shall pay the program a phase of work oversight fee as follows:

\$750 - Prioritization Investigation, Environmental Assessment (Phase 1, Phase 2) or comparable
\$2,000 - Solvent Impact Assessment, Remedial Investigation or comparable
\$1,500 - Remedial Alternatives Study, Feasibility Study or comparable
\$3,000 - Response Complete Letter, Final Remedial Action Report

- (c) Notwithstanding the request for and provision of oversight under the program pursuant to either clause (a) or (b) above, any PEP may apply for entry of a facility in the program under Rule 1200-1-17-.05 and proceed to comply with the requirements thereunder; provided, that any costs incurred under oversight pursuant to clauses (a) or (b) above shall not be reimbursable from the program Fund.

Rule 1200-1-17-.08(4) is amended by adding subparagraph (h) so that, as amended, Rule 1200-1-17-.08(4)(h) shall read:

- (h) Monies held in the Fund shall not be used to reimburse owners or operators of facilities conducting investigative or remedial activities under Rule 1200-1-17-.05(12).

Rule 1200-1-17-.03(6)(a) is amended by deleting it in its entirety and substituting the following:

- (a) The surcharge fee is applicable for all drycleaning solvent purchased or transferred after September 30, 1995. The surcharge fee is ten dollars (\$10.00) for each gallon of dense nonaqueous solvent or product, one dollar (\$1.00) for each gallon of light non-aqueous solvent or product except CO₂ and twenty-five cents (\$0.025) for each gallon (\$0.0028 per pound) of CO₂ obtained by a drycleaning facility.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005. (01-25)

TENNESSEE STATE BOARD OF EQUALIZATION - 0600

There will be a hearing before the Tennessee State Board of Equalization to consider the promulgation of rules pursuant to Tenn. Code Ann. §§67-1-305. 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 17th floor conference room of the James K. Polk State Office Bldg., Nashville, Tennessee, at 10:30 a.m. on the 23rd day of March, 2005.

Any individuals with disabilities who wish to participate in these proceedings should contact the Board to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact should be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Board to determine how it may reasonably provide such aid or service. Initial contact may be made with the Board's ADA Coordinator, Elaine Driver, at Ste. 1400, 505 Deaderick St., Nashville, TN 37243-0261 and tele. no. 615/401-7738.

For a copy of this notice of rulemaking hearing, contact: Kelsie Jones, Ste. 1700, 505 Deaderick St., Nashville, TN 37243-0280, and tele. no. 615/401-7883.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0600-1 CONTESTED CASE PROCEDURES

AMENDMENTS

Rule 0600-6-.17 (Initiating a contested case) is amended by deleting the following sentence in subparagraph (1)(d): “Electronic filing is not available when the number of parcels in a single filing is fewer than 100.”

Authority: T.C.A. §67-1-305.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005. (01-26)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 18th day March 2005.

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

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

SUBSTANCE OF PROPOSED RULE

Subparagraph (d) of paragraph (105) of rule 1200-13-13-.01 Definitions (TennCare Medicaid) is amended by replacing “December 31, 2002” in the first sentence with “December 31, 2001” so as amended subparagraph (d) shall read as follows:

- (d) Had Medicare as of December 31, 2001 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of “uninsurable” in effect at that time. Effective January 1, 2003 these individuals are eligible only for the TennCare Standard pharmacy benefit package; or

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005. (01-32)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 18th day March, 2005.

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

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

SUBSTANCE OF PROPOSED RULES

Rule 1200-13-13-.01 Definitions (TennCare Medicaid) is amended by adding a new paragraph (39) and renumbering the present paragraph (39) as (40) and the following paragraphs renumbered accordingly so as amended the new paragraph (39) shall read as follows:

- (39) Handicapping Malocclusion, for the purposes of determining eligibility under these regulations shall mean the presence of abnormal dental development that has at least one of the following:
 - (a) A medical condition and/or a nutritional deficiency with medical physiological impact, that is documented in the physician progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to medical treatment without orthodontic treatment.

- (b) The presence of a speech pathology, that is documented in speech therapy progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to speech therapy without orthodontic treatment.
- (c) Palatal tissue laceration from a deep impinging overbite where lower incisor teeth contact palatal mucosa. This does not include occasional biting of the cheek.

Anecdotal information is insufficient to document the presence of a handicapping malocclusion. Anecdotal information is represented by statements that are not supported by professional progress notes that the patient has difficulty with eating, chewing, or speaking. These conditions may be caused by other medical conditions in addition to the misalignment of the teeth.

Dental services of subparagraph (a) of paragraph (7) of rule 1200-13-13-.04 Covered Services (TennCare Medicaid) is amended by deleting the last paragraph and replacing it with a new paragraph so as amended "Dental Services" shall read as follows:

Dental Services	<p>Preventive, diagnostic and treatment services for enrollees under age 21. Services for enrollees age 21 or older limited to cases of accidental injury to or neoplasms of the oral cavity, life threatening infections that include, but are not limited to, individuals with severely compromised immune systems, organ donor recipients, or individuals with or scheduled to receive a prosthetic heart valve(s), accidental injury to natural teeth including their replacement (limited to the cost of bridgework or the replacement of teeth injured in an accident unless teeth implants are medically necessary) and the removal of impacted wisdom teeth. (The adult dental "accident" must be caused by some external force, like a car accident, not by some normal act of mastication, or grinding of teeth while sleeping, or any other naturally occurring circumstance and must have occurred during a period of TennCare eligibility and within twelve (12) months from the date service is requested.)</p> <p>Orthodontic services are limited to individuals under age 21. There must be authorization for treatment and the treatment must have begun at least six (6) months prior to the enrollees 21st birthday. Treatment begun at least six (6) months prior to the enrollees 21st birthday may continue past age 21 as long as the individual remains eligible.</p> <p>For individuals under age 21, orthodontic services are limited to individuals diagnosed with: 1) a severe handicapping malocclusion or another developmental anomaly or injury resulting in severe malalignment or severe handicapping malocclusion of teeth, documented by at least 28 points on the Salzmann Scale, or any other method that is approved by TennCare, or 2) following repair of an enrollee's cleft palate. Orthodontic treatment will not be authorized for cosmetic purposes.</p>
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Paragraph (1) of rule 1200-13-13-.10 Exclusions (TennCare Medicaid) is amended by adding subparagraph (o) which shall read as follows:

- (o) Orthodontic services except under the conditions set out at rule 1200-13-13-.04 (7)(a) (Dental Services).

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005. (01-31)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 18th day March 2005.

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

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

SUBSTANCE OF PROPOSED RULES

Rule 1200-13-14-.01 Definitions (TennCare Standard) is amended by adding a new paragraph (39) and renumbering the present paragraph (39) as (40) and the following paragraphs renumbered accordingly so as amended the new paragraph (39) shall read as follows:

- (39) Handicapping Malocclusion, for the purposes of determining eligibility under these regulations shall mean the presence of abnormal dental development that has at least one of the following:
 - (a) A medical condition and/or a nutritional deficiency with medical physiological impact, that is documented in the physician progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to medical treatment without orthodontic treatment.
 - (b) The presence of a speech pathology, that is documented in speech therapy progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to speech therapy without orthodontic treatment.
 - (c) Palatal tissue laceration from a deep impinging overbite where lower incisor teeth contact palatal mucosa. This does not include occasional biting of the cheek.

Anecdotal information is insufficient to document the presence of a handicapping malocclusion. Anecdotal information is represented by statements that are not supported by professional progress notes that the patient has difficulty with eating, chewing, or speaking. These conditions may be caused by other medical conditions in addition to the misalignment of the teeth.

Dental services of subparagraph (a) of paragraph (9) of rule 1200-13-14-.04 Covered Services (TennCare Standard) is amended by deleting “Dental Services” in its entirety and replacing it with a new “Dental Services” which shall read as follows:

Dental Services	<p>Preventive, diagnostic and treatment services for enrollees under age 21. Services for enrollees age 21 or older limited to cases of accidental injury to or neoplasms of the oral cavity, life threatening infections that include, but are not limited to, individuals with severely compromised immune systems, organ donor recipients, or individuals with or scheduled to receive a prosthetic heart valve(s), accidental injury to natural teeth including their replacement (limited to the cost of bridgework or the replacement of teeth injured in an accident unless teeth implants are medically necessary) and the removal of impacted wisdom teeth. (The adult dental “accident” must be caused by some external force, like a car accident, not by some normal act of mastication, or grinding of teeth while sleeping, or any other naturally occurring circumstance and must have occurred during a period of TennCare eligibility and within twelve (12) months from the date service is requested.)</p> <p>Orthodontic services are limited to individuals under age 21. There must be authorization for treatment and the treatment must have begun at least six (6) months prior to the enrollees 21st birthday. Treatment begun at least six (6) months prior to the enrollees 21st birthday may continue past age 21 as long as the individual remains eligible.</p> <p>For individuals under age 21, orthodontic services are limited to individuals diagnosed with: 1) a severe handicapping malocclusion or another developmental anomaly or injury resulting in severe malalignment or severe handicapping malocclusion of teeth, documented by at least 28 points on the Salzmann Scale, or any other method that is approved by TennCare, or 2) following repair of an enrollee’s cleft palate. Orthodontic treatment will not be authorized for cosmetic purposes.</p>
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Paragraph (1) of rule 1200-13-14-.10 Exclusions (TennCare Standard) is amended by adding subparagraph (o) which shall read as follows:

- (o) Orthodontic services except under the conditions set out at rule 1200-13-14-.04 (9)(a) (Dental Services).

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 31, 2005. (01-33)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.S.T. on the 18th day March, 2005.

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

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

SUBSTANCE OF PROPOSED RULE

Subparagraph (d) of paragraph (105) of rule 1200-13-14-.01 Definitions (TennCare Standard) is amended by replacing "December 31, 2002" in the first sentence with "December 31, 2001" so as amended subparagraph (d) shall read as follows:

- (d) Had Medicare as of December 31, 2001 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of "uninsurable" in effect at that time. Effective January 1, 2003 these individuals are eligible only for the TennCare Standard pharmacy benefit package; or

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005.
(01-34)

**DEPARTMENT OF HEALTH - 1200
BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS
DIVISION OF HEALTH RELATED BOARDS**

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. 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 6th day of April, 2005.

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 1200-30-1-.05, Licensure Process, is amended by adding the following new language as paragraph (3) and renumbering the remaining paragraphs accordingly:

- (3) Each applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, and 68-24-605.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of January, 2005. (01-17)

**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, and 68-29-104, 68-29-105, 68-29-116, 68-29-117, 68-29-118, 68-29-125, and 68-29-127. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 24th day of March, 2005.

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 1200-6-1-.05 Procedures for Personnel Licensure, is amended by adding the following language as subparagraph (1) (m) and re-lettering the remaining subparagraphs accordingly, and is further amended by deleting subparagraph (2) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (m) and (2) (a) shall read:

- (1) (m) The applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (2) (a) In addition to fulfilling the above requirements in paragraph (1), an internationally trained applicant must also:

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, 68-29-116, 68-29-117, 68-29-118, and 68-29-127.

Rule 1200-6-3-.01 Definitions, is amended by deleting paragraph (23) in its entirety and renumbering the remaining paragraphs accordingly, and is further amended by adding the following language as new paragraph (6) and renumbering the remaining paragraphs accordingly:

- (6) CLSI – The Clinical Laboratory and Standards Institute.

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

Rule 1200-6-3-.09 Quality Control, is amended by deleting subparagraph (4) (a) and part (8) (e) 4. in their entirety and substituting instead the following language, so that as amended, the new subparagraph (4) (a) and the new part (8) (e) 4. shall read:

- (4) (a) A written procedure manual for the performance of all analytical methods used by the laboratory must be readily available and followed by laboratory personnel. Textbooks may be used as supplements to these written descriptions but may not be used in lieu of the laboratory's written procedures for testing or examining specimens. Procedure should be substantially in compliance with the CLSI, GP-2A, current version, or any subsequent version.

- (8) (e) 4. The laboratory must check each batch or shipment of media for sterility, if it is intended to be sterile and if sterility is required for testing. Media must also be checked for its ability to support growth, and as appropriate, selectivity/inhibition and/or biochemical response. The laboratory may use manufacturer's control checks of media provided the manufacturer's product insert specifies that the manufacturer's quality control checks meet the current standards of the Clinical and Laboratory Standards Institute (CLSI) for media quality control. The laboratory must document that the physical characteristics of the media are not compromised and report any deterioration in the media to the manufacturer. The laboratory must follow the manufacturer's specifications for using the media and be responsible for the test results.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-125.

Rule 1200-6-3-.16 Alternate Site Testing, is amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by adding the following language as new subparagraph (3) (a) and re-lettering the remaining subparagraphs accordingly, so that as amended, the new paragraph (3) but not its subparagraphs and the new subparagraph (3) (a) shall read:

- (3) Screening Programs – Screening programs are offerings of specified medical laboratory tests to the general public, the purpose of which is educational rather than for diagnosis disease, and the results of which are immediately available on the site of the program to the person being tested except for those tests which for methodological reasons must be submitted to a medical laboratory in which case they shall be sent to a Tennessee licensed medical laboratory.

- (3) (a) Screening programs conducted by for-profit hospitals or nonprofit organizations are exempt from the licensure requirements of the Medical Laboratory Act, pursuant to T.C.A. § 68-29-104(6), when the following conditions are met:

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 14th day of January, 2005. (01-10)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-224, 63-24-102, 63-24-104, and 63-24-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 22nd day of March, 2005.

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-.03 Licensure Process U.S. and Canada Medical School Graduates, is amended by adding the following new language as paragraph (11) and renumbering the remaining paragraphs accordingly:

- (11) The applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 0880-2-.04 Licensure Process International Medical School Graduates, is amended by adding the following new language as paragraph (14) and renumbering the remaining paragraphs accordingly:

- (14) The applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 0880-2-.05 Licensure of Out of State and International Applicants, is amended by adding the following new language as paragraph (10) and renumbering the remaining paragraphs accordingly:

- (10) Any applicant for any type of licensure authorized by this rule shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 0880-2-.06 Training Licenses And Licensure Exemptions, is amended by deleting part (1)(a)2. and substituting instead the following new language as part (1)(a)2.:

- (1) (a) 2. The documentation required by rule 0880-2-.03 paragraphs (2), (4), (5), (6), (9) and (11) or rule 0880-2-.04 (2), (4), (6), (7), (8), (12) and (14) for each applicant.

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

Rule 0880-2-.06 Training Licenses and Licensure Exemptions, is amended in paragraph (2) by adding the following new language as subparagraph (b) and re-lettering the remaining subparagraphs accordingly:

- (2) (b) The applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified by correspondence with the Board's administrative office, the result of a criminal background check.

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

Rule 0880-2-.06 Training Licenses and Licensure Exemptions, is amended in paragraph (3) by adding the following new language as subparagraph (b) and re-lettering the remaining subparagraphs accordingly:

- (3) (b) The applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified by correspondence with the Board's administrative office, the result of a criminal background check.

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

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended in paragraph (5) by adding the following new language as subparagraph (d) and re-lettering the remaining subparagraphs accordingly:

- (5) (d) The physician shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended in paragraph (6) by deleting part (a)2. and substituting instead the following new language as part (6)(a)2.:

- (6) (a) 2. All documentation required by rule 0880-2-.05 paragraphs (2), (4), (5), (6), (7) and (10).

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

Rule 0880-2-.16 Telemedicine Licensure, is amended by deleting part (2)(a)2. and substituting instead the following new part (2)(a)2.:

- (2) (a) 2. All documentation required by rule 0880-2-.05 paragraphs (2), (4), (5), (6), (7) and (10).

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

Rule 0880-4-.05 Licensure Process, is amended in paragraph (2) by adding the following language as a new subparagraph (k):

- (2) (k) The applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102 and 63-24-104.

Rule 0880-4-.05 Licensure Process, is amended in paragraph (3) by adding the following language as a new subparagraph (e):

- (3) (e) Cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102 and 63-24-104.

Rule 0880-4-.09 Licensure Renewal and Reinstatement, is amended by adding the following language as new subparagraph (2) (c) and renumbering the present subparagraphs (2) (c) and (2) (d) as subparagraphs (2) (d) and (2) (e):

- (2) (c) Submit documentation of successful completion of the continuing education requirements, as provided in rule 0880-4-.12, for all the three (3) calendar year (January 1 – December 31) periods that the license was expired that precede the calendar year during which the reinstatement is requested; and

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-24-102, and 63-24-105.

Rule 0880-4-.11 Retirement and Reactivation of License, is amended by adding the following language as new subparagraph (3) (c) and renumbering the present subparagraphs (3) (c) through (3) (g) as subparagraphs (3) (d) and (3) (h):

- (3) (c) Submit documentation of successful completion of eighty (80) hours of continuing education, as provided in rule 0880-4-.12, during the three (3) calendar year (January 1 – December 31) period that precedes the calendar year during which the reactivation is requested; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-24-102, and 63-24-105.

Rule 0880-5-.04 Qualifications for Full and Limited Certification, is amended in paragraph (2) by adding the following language as subparagraph (g) and re-lettering the remaining subparagraph accordingly:

- (2) (g) Cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check; and

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214 and 63-6-224.

Rule 0880-5-.04 Qualifications for Full and Limited Certification, is amended by deleting paragraph (3) and substituting instead the following new paragraph (3):

- (3) Any person who holds a radiological certificate issued by another state obtained pursuant to standards and procedures substantially equivalent to the standards set by these Rules may receive a certification at an appropriate level at the Board's discretion upon compliance with subparagraph (2) (g) of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214 and 63-6-224.

Rule 0880-5-.11 Bone Densitometry, is amended by adding the following language as part (3)(a)7. and renumbering the remaining part accordingly:

- (3) (a) 7. Cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check; and

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214 and 63-6-224.

Rule 0880-9-.04 Procedures for Certification, is amended by adding the following new language as paragraph (7) and renumbering the remaining paragraph accordingly.

- (7) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-224, and 63-6-237.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of January, 2005. (01-16)

**BOARD OF MEDICAL EXAMINERS - 0880
COMMITTEE ON PHYSICIAN ASSISTANTS**

There will be a hearing before the Tennessee Board of Medical Examiner's Committee on Physician Assistants to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-19-104, and 63-19-201. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 18th day of March, 2005.

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 0880-3-.05 Procedures for Licensure, is amended by adding the following language as new parts (1) (o) 5. and (2) (o) 5. and renumbering the remaining parts accordingly:

- (1) (o) 5. Result of a criminal background check;
- (2) (o) 5. Result of a criminal background check;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, and 63-19-104.

Rule 0880-3-.05 Procedures for Licensure, is amended by adding the following language as new subparagraphs (1) (h) and (2) (h) and renumbering the remaining subparagraphs accordingly:

- (1) (h) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's licensure application materials, the result of a criminal background check.
- (2) (h) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, and 63-19-104.

Rule 0880-10-.05 Procedures for Licensure, is amended by adding the following language as new subparagraph (15) (e) and renumbering the remaining subparagraphs accordingly:

- (15) (e) Result of a criminal background check;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-19-104, and 63-19-201.

Rule 0880-10-.05 Procedures for Licensure, is amended by adding the following language as new paragraph (8) and renumbering the remaining paragraphs accordingly:

- (8) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-19-104, and 63-19-201.

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of January, 2005. (01-09)

BOARD OF DISPENSING OPTICIANS - 0480

There will be a hearing before the Tennessee Board of Dispensing Opticians to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-14-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 17th day of March, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 0480-1-.05, Procedures for Licensure, is amended by adding the following language as new paragraph (11):

- (11) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-104, and 63-14-111.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of January, 2005.
(01-06)

BOARD OF OPTOMETRY - 1045

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 3rd day of May, 2005.

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

AMENDMENTS

Rule 1045-2-.02, Licensure Process, is amended by deleting subparagraph (8) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (b) shall read:

- (8) (b) Applicants who do not currently hold a valid Tennessee license to practice Optometry must comply with all provisions of paragraphs (1) through (8) of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, 63-8-120, and 63-8-133.

Rule 1045-2-.02, Licensure Process, is amended by adding the following language as new paragraph (8) and renumbering the remaining paragraphs accordingly:

- (8) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-120.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of January, 2005. (01-22)

BOARD OF EXAMINERS IN PSYCHOLOGY - 1180

There will be a hearing before the Tennessee Board of Examiners in Psychology to consider the promulgation of amendment to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 21st day of March, 2005.

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 1180-2-.03, Procedures for Licensure, is amended by adding the following language as new paragraph (9) and renumbering the remaining paragraphs accordingly:

- (9) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 1180-2-.03, Procedures for Licensure, is amended by adding the following language as new subparagraph (11) (e) and renumbering the remaining subparagraphs accordingly:

- (11) (e) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check..

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

Rule 1180-2-.05, Temporary License, is amended by adding the following language as new paragraph (4):

- (4) All applicants for temporary licensure shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 1180-2-.06, Provisional License, is amended by adding the following language as new paragraph (2) and renumbering the remaining paragraphs accordingly:

- (2) An applicant for provisional licensure shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 1180-3-.03, Procedures for Licensure, is amended by adding the following language as new subparagraph (1) (j) and renumbering the remaining subparagraphs accordingly:

- (1) (j) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 1180-3-.05, Temporary License, is amended by adding the following language as new subparagraph (2) (b) and renumbering the remaining subparagraphs accordingly:

- (2) (b) An applicant for temporary licensure shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

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

Rule 1180-4-.03, Procedures for Certification, is amended by adding the following language as new paragraph (10) and renumbering the remaining paragraphs accordingly:

- (10) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's certification application materials, the result of a criminal background check.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of January, 2005. (01-08)

**THE TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680
CIVIL RIGHTS DIVISION**

There will be a hearing before the Tennessee Department of Transportation to consider the promulgation of new rules establishing the Construction Management Development Program pursuant to Tennessee Code Annotated § 4-3-2305. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the Auditorium of the Main Administrative Building (Building "A") at the Tennessee Department of Transportation, Region III Office Complex, located at 6601 Centennial Boulevard, Nashville, Tennessee 37243-0360 at 4 p.m. CST on April 1, 2005 (Take Briley Parkway to Exit 26B, Centennial Boulevard West.)

Written comments will be considered if received by the close of business (4:30 p.m.) on April 1, 2005, in the Office of General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, or if received at the public rulemaking hearing on April 1, 2005.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Department of Transportation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone or other appropriate means, and should be made no less than ten (10) days prior to the public hearing (April 1, 2005) or the date the party intends to review such filings to allow time to provide such aid or service. Such contact may be made with the Department of Transportation's ADA Coordinator at Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0327, or by telephone at (615) 741-4984.

For a copy of this notice of rulemaking hearing, contact: Brian R. Carroll, Tennessee Department of Transportation, Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, telephone number (615) 741-2941.

SUBSTANCE OF PROPOSED RULES

NEW RULES

**CHAPTER 1680-8-3
CONSTRUCTION MANAGEMENT DEVELOPMENT PROGRAM**

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1680-8-3-.01 PURPOSE. This rule implements a voluntary comprehensive Construction Management Development Program (CMDP) for Certified Small Businesses.

Authority: T.C.A. §4-3-2305.

1680-8-3-.02 DEFINITION OF TERMS.

For the purpose of administering this program, the following definitions shall apply:

- (1) “Average Annual Gross Receipts” - means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, and employee-based costs such as payroll taxes, may not be excluded from receipts.
- (2) “Bond Guarantee Program” or “BGP” - means a program in which the Tennessee Department of Transportation may act as a secondary surety for select Certified Small Businesses.
- (3) “Certification of Proficiency” - means a certificate awarded to Certified Small Businesses meeting the Minimum Curriculum Standards of Proficiency (See Rule 1680-8-3-.02(7) herein).

- (4) “Certified Small Business” - means a small business that has been approved by the Department as meeting the statutory criteria to participate (if selected by the Department) in the Construction Management Development Program (CMDP) and/or Bond Guarantee Program (BGP). A business meets the statutory criteria if the business (including its affiliates) is a certified disadvantaged business enterprise (DBE) as defined by 49 CFR Part 26. Also, a business meets the statutory criteria if the business satisfies all the requirements of a disadvantaged business enterprise (DBE) as defined by 49 CFR Part 26 other than the requirement that the business is owned by socially and economically disadvantaged individuals as defined in 49 CFR Part 26.5.
- (5) “Construction Management Development Program” or “CMDP” - means an original program of instruction taught to groups of individuals who are owners of Certified Small Businesses to enhance, improve, or develop skills needed to successfully perform construction projects. This program may consist of classroom instruction and on-the-job instruction.
- (6) “Department” - means the Tennessee Department of Transportation.
- (7) “Minimum Curriculum Standards of Proficiency” - means established minimum requirements that a Certified Small Business owner must attain to demonstrate proficiency and capability regarding the instruction received through the classroom instruction portion of the CMDP.
- (8) “Small Business” - means a business (including its affiliates) that over the business’s previous three fiscal years has had Average Annual Gross Receipts (See Rule 1680-8-3-.02(1) herein) not in excess of the business size limitations established in 49 CFR Part 26.65, or as any such limitation may be adjusted for inflation by the United States Secretary of Transportation as provided in 49 CFR Part 26.65.
- (9) “Small Business Development Program Office” - means the office of the Tennessee Department of Transportation that has the responsibility of monitoring and enforcing the Department’s CMDP and BGP.
- (10) “Tennessee Department of Transportation Small Business Development Review Committee” - means the committee within the Tennessee Department of Transportation which renders final decisions of the Department on the CMDP and BGP.

Authority: *T.C.A. §4-3-2305.*

1680-8-3-.03 CONSTRUCTION MANAGEMENT DEVELOPMENT PROGRAM APPLICATION.

- (1) All businesses seeking admission to the Construction Management Development Program shall complete and submit an Application for Construction Management Development Program (CMDP) and an Application for Small Business Certification to the Tennessee Department of Transportation/Civil Rights Office, Small Business Development Program, Suite 1800, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0347 (See Rule 1680-8-3-.12 herein). The Department may request additional information, if needed, from the applicant.
- (2) The CMDP applicant may also request exemption from the classroom and on-the-job instruction (See Rule 1680-8-3-.09 herein).
- (3) Only those businesses that have been certified (as a Certified Small Business) by the Department as meeting the statutory criteria may be eligible to participate in the CMDP. A business meets the statutory criteria if the business is a certified disadvantaged business enterprise (DBE) as defined by 49 CFR Part 26. Also, a business meets the statutory criteria if the business satisfies all the requirements of a disadvantaged

business enterprise (DBE) as defined by 49 CFR Part 26 other than the requirement that the business is owned by socially and economically disadvantaged individuals as defined in 49 CFR Part 26.5.

- (4) The Small Business Development Program Office shall make a preliminary finding as to the eligibility of each applicant.
- (5) Preliminary findings shall be subject to approval of the Tennessee Department of Transportation Small Business Development Review Committee, which shall render the final Department decision in each case.
- (6) The Small Business Development Program Office shall advise each applicant whom, in its opinion, is ineligible for certification of its preliminary finding by certified mail, return receipt requested. Reasons shall be given as to why admission cannot be granted.
- (7) The applicant shall then have fifteen (15) days after receipt of notice to request in writing an appeal to the Tennessee Department of Transportation Small Business Development Review Committee, which may reverse or uphold the Small Business Development Program Office's preliminary finding in its final decision.
- (8) Should the applicant not appeal within the fifteen (15)-day period, then the preliminary finding of the Small Business Development Program Office shall become the final decision of the Tennessee Department of Transportation Small Business Development Review Committee.

Authority: *T.C.A. §4-3-2305.*

1680-8-3-.04 NEEDS ASSESSMENT.

- (1) After determination of eligibility, the Department may conduct a needs assessment of the Certified Small Business. The purpose of the assessment is to:
 - (a) Determine the areas of strengths and weaknesses of the applicant in terms of proficiency and capability in performing on highway construction and transportation support related projects.
 - (b) Identify those applicants who should receive exemption from the CMDP because of demonstrated satisfactory project performance. This determination may be based on evaluation of the applicant on the scoring system in this Rule (See Rule 1680-8-3-.09 herein) using the following sources:
 1. Needs assessment report;
 2. Application;
 3. Document(s) accompanying application;
 4. Interviews with applicant;
 5. Interviews with Department staff familiar with the applicant's work;
 6. Review of applicant's past performance record from Department records and references; and
 7. Any other reports or information that inform about the applicant's performance and capacity.

- (c) Determine the specific courses for which the applicant should register to improve skills and correct weaknesses or deficiencies.
 - (d) Identify areas of need for technical assistance through on-the-job training.
- (2) After completion of the needs assessment, each applicant will be notified in writing of the findings and recommendations.

Authority: T.C.A. §4-3-2305.

1680-8-3-.05 ELIGIBILITY FOR THE CONSTRUCTION MANAGEMENT DEVELOPMENT PROGRAM.

- (1) Participants in the CMDP will consist of those Certified Small Businesses that have obtained a needs assessment by the Department (if the Department chooses to conduct such assessment) and have been admitted to the program. This program may consist of two primary components: classroom instruction and on-the-job instruction.

Authority: T.C.A. §4-3-2305.

1680-8-3-.06 ENROLLMENT PROCEDURES FOR THE CONSTRUCTION MANAGEMENT DEVELOPMENT PROGRAM.

- (1) To enroll in the CMDP, each applicant shall submit a completed application form (See Rule 1680-8-3-.03 (1) herein) to the Department along with the appropriate application fee as may be set by the Department.
- (a) The Department shall forward written notification to the educational institution conducting the classroom instruction to advise of the applicant's approval to register. It will be the applicant's responsibility to complete registration and pay registration fees as may be required by the institution.
 - (b) Each institution conducting classroom instruction will submit completed registration information to the Department.

Authority: T.C.A. §4-3-2305.

1680-8-3-.07 CLASSROOM INSTRUCTION.

- (1) Classroom instruction may include instruction in project planning methods for identifying manpower, equipment, and financial resource needs; bookkeeping; project scheduling; state bidding and bonding requirements; state and federal tax requirements; strategies for obtaining loans and surety bonding; and techniques for negotiating and drafting joint venture agreements.
- (2) The Department may establish a classroom curriculum.
- (3) The Department may establish classes, course requirements, and class testing requirements.
- (4) Conduct of Classroom Instruction.

- (a) The Department shall approve the number of courses and types of courses that shall compose a complete program of instruction by trade or profession for Certified Small Businesses desiring admission to the BGP. Satisfactory completion of the classroom curriculum shall be required of all applicants for the BGP that have not received exemption from the CMDP.
- (b) Curriculum Standards. The Department shall approve the program of courses established by the educational institutions and/or private sector firms for specific trade and professional groups that must be successfully completed (to meet Minimum Curriculum Standards of Proficiency) in order to receive a Certification of Proficiency for each definitive group. Those groups may include:
 - 1. General contractors, highway construction; and
 - 2. Special trade/professional contractors including asphalt paving, building, construction/modification, concrete, miscellaneous, drainage, earthwork, erosion control, fencing, guardrail, landscaping, painting, steel, traffic control, trucking, architecture, business and financial management, consultants, and materials supply.
- (5) Follow-up of Classroom Instruction. Participants who desire to take additional classroom instruction may be permitted to do so without paying an additional application fee, but all course registration fees shall have to be paid.

Authority: T.C.A. §4-3-2305.

1680-8-3-.08 ON-THE-JOB INSTRUCTION.

- (1) On-the-job instruction shall also be known as technical assistance. The instruction may include the following areas: setting up the job site; cash flow method; project scheduling; making quantity take-offs and cost estimating; reading plans and specifications; Department procedures on payments; quality assessment and control methods; and bid preparation methods.
- (2) Initiating Procedure. As a result of the needs assessments or classroom instruction, areas of deficiency may be identified for which technical assistance may be appropriate. Any participant in the CMDP may also request technical assistance in any area of training provided as part of the program.
- (3) Technical Assistance Plans.
 - (a) Upon receipt of a technical assistance request from a participant, the Department may review the request and develop a technical assistance plan. That plan may contain the following information:
 - 1. Approach to resolving the problem;
 - 2. The type of training required to resolve the problem;
 - 3. The number of technical assistance days estimated to resolve the problem; and
 - 4. Cost of assistance.

- (b) The Department may submit a plan to the participant after receiving the request for technical assistance. Upon payment of the required fee, the Department may assign a contractor who has volunteered to participate, a consultant, or a Department employee to provide the technical assistance at the participant's place of business or job-site.
- (c) Upon completion of a needs assessment (if the Department chooses to conduct one) that identifies areas of needed technical assistance — the Department may review the information and develop a technical assistance plan to address the identified needs. That plan may contain the following information:
 - 1. Approach to resolving the problem;
 - 2. The type of training required to resolve the problem;
 - 3. The number of technical assistance days estimated to resolve the problem; and
 - 4. Cost of assistance.

Authority: T.C.A. §4-3-2305.

1680-8-3-.09 EXEMPTION FROM THE CONSTRUCTION MANAGEMENT DEVELOPMENT PROGRAM.

- (1) The Small Business Development Program Office may determine exemption from the classroom and on-the-job training based on evaluation of the applicant's project performance through comparison with the Minimum Curriculum Standards of Proficiency. It shall be the responsibility of the applicant to provide evidence of the following criteria. Evaluation shall be based on the following scoring system:

- (a) Administration and Management of Business – Maximum 15 Points.

The applicant shall provide adequate evidence that it:

- 1. Holds all relevant licenses and meets all other legal requirements regarding the Certified Small Business;
- 2. Shows capability to develop an overall business plan;
- 3. Maintains an adequate credit history;
- 4. Maintains adequate staff and employees required to carry out the work associated with the Certified Small Business;
- 5. Maintains a payroll system set up to feed accurate and complete information into the job costing system;
- 6. Is able to generate accurate financial statements in accordance with generally accepted accounting principles; and
- 7. Has policies and procedures regarding timely billing and collection from customers.

(b) Bidding/Estimates – Maximum 20 Points.

The applicant shall provide adequate evidence that it:

1. Has an understanding to implement all requisite steps in the preparation of Department bids; and
2. Has competence in accurately estimating project costs.

(c) Contract Negotiating and Knowledge – Maximum 15 Points.

The applicant shall provide adequate evidence that it:

1. Has an understanding of contract terms concerning the rights, obligations, and liabilities for Small Businesses;
2. Has an understanding of the basic elements of Department contracts; and
3. Has an ability to adequately negotiate, draft, and interpret subcontracts.

(d) Project Planning – Maximum 20 Points.

The applicant shall provide adequate evidence that it:

1. Has capability in scheduling and phasing the work of a project and in allocating labor to timely complete the project;
2. Has skill in developing schedules for ordering and assuring delivery of materials and equipment and hiring of work force; and
3. Has knowledge of the reports and other paperwork required by the Department and/or the prime contractor.

(e) Project Performance – Maximum 30 Points.

The applicant shall provide adequate evidence that it:

1. Maintains a system of project monitoring that includes job-site inspections by management as well as periodic reporting from its project superintendent;
2. Maintains a field monitoring and reporting system to warn of any deviations from project schedule or cost overruns;
3. Has capability to maintain an updated and accurate job costing system;
4. Maintains a system for dealing with change orders; including requiring written change order and method for calculating prices to cover the changes; and
5. Has knowledge of project closeout procedures.

(f) TOTAL MAXIMUM POINTS: 100.

- (2) The Small Business Development Program Office shall assign the score that is most representative of the Certified Small Business's proficiency.
 - (a) For scores 85 and above, the Certified Small Business may be exempt from the CMDP. However, the exempted Certified Small Business may enroll in the CMDP if so desired by that applicant.
 - (b) For scores under 85, the Certified Small Business may be enrolled in the CMDP if obtaining a Certification of Proficiency is desired.

Authority: T.C.A. §4-3-2305.

1680-8-3-.10 CERTIFICATION OF PROFICIENCY.

- (1) Each Certified Small Business participant must satisfactorily complete each component of the classroom training in order to meet the minimum standard of proficiency or receive exemption to apply and potentially gain admission to the BGP. The Certified Small Business may be awarded a Certification of Proficiency upon successful completion of the classroom component and completion of all required technical assistance training or upon receipt of exemption.

Authority: T.C.A. §4-3-2305.

1680-8-3-.11 REVOCATION.

- (1) The Department's acceptance of a Certified Small Business in the CMDP may be revoked if the Department finds the business no longer meets the requirements of a Certified Small Business.
- (2) A Certified Small Business's participation in the CMDP may be revoked if the Department finds the business willfully made a false, deceptive, or fraudulent statement in any document submitted to the Department.
- (4) Prior to revoking a Certified Small Business's participation in the CMDP, written notice shall be sent from the Small Business Development Program Office explaining why the Department's acceptance of the Certified Small Business in the CMDP shall be revoked. The Certified Small Business shall have fifteen (15) days to respond to the deficiencies. If the Certified Small Business does not respond or if the Certified Small Business's explanation is not sufficient, then the Certified Small Business shall be advised by certified mail, return receipt requested, of the preliminary finding of ineligibility for retention of participation in the CMDP. Reasons shall be given for the preliminary finding.
- (5) The Certified Small Business shall then have fifteen (15) days after receipt of notice to submit a written appeal to the Tennessee Department of Transportation Small Business Development Review Committee, which may reverse or uphold the Small Business Development Program Office's preliminary finding in its final decision.
- (6) Should the Certified Small Business not appeal within the fifteen (15)-day period, then the preliminary finding of the Small Business Development Program Office shall become the final decision of the Tennessee Department of Transportation Small Business Development Review Committee.
- (7) No application fee or registration fee shall be refunded upon revocation.

Authority: T.C.A. §4-3-2305.

1680-8-3-.12 FORMS.

- (1) The following listed forms are hereby incorporated by reference and made a part of the Rules of the Department:
 - (a) Application for Construction Management Development Program (CMDP).
 - (b) Application for Small Business Certification.
 - (c) Technical Assistance Request Form.

- (2) Copies of these forms are to be obtained from the Tennessee Department of Transportation/Civil Rights Office, Small Business Development Program, Suite 1800, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0347.

Authority: T.C.A. §4-3-2305.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005. (01-28)

**TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680
CIVIL RIGHTS DIVISION**

There will be a hearing before the Tennessee Department of Transportation to consider the promulgation of new rules establishing the Bond Guarantee Program pursuant to Tennessee Code Annotated § 4-3-2305. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the Auditorium of the Main Administrative Building (Building "A") at the Tennessee Department of Transportation, Region III Office Complex, located at 6601 Centennial Boulevard, Nashville, Tennessee 37243-0360 at 4 p.m. CST on April 1, 2005 (Take Briley Parkway to Exit 26B, Centennial Boulevard West.)

Written comments will be considered if received by the close of business (4:30 p.m.) on April 1, 2005, in the Office of General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, or if received at the public rulemaking hearing on April 1, 2005.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Department of Transportation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone or other appropriate means, and should be made no less than ten (10) days prior to the public hearing (April 1, 2005) or the date the party intends to review such filings to allow time to provide such aid or service. Such contact may be made with the Department of Transportation's ADA Coordinator at Suite 400, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0327, or by telephone at (615) 741-4984.

For a copy of this notice of rulemaking hearing, contact: Brian R. Carroll, Tennessee Department of Transportation, Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, telephone number (615) 741-2941.

SUBSTANCE OF PROPOSED RULES

NEW RULES

**CHAPTER 1680-8-4
BOND GUARANTEE PROGRAM**

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1680-8-4-.01 PURPOSE. This rule establishes a program for providing financial assistance to select Certified Small Businesses through a Bond Guarantee Program (BGP).

Authority: T.C.A. §4-3-2305.

1680-8-4-.02 DEFINITION OF TERMS.

For the purpose of administering this program, the following definitions shall apply:

- (1) “Average Annual Gross Receipts” - means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, and employee-based costs such as payroll taxes, may not be excluded from receipts.
- (2) “Bond Guarantee Program” or “BGP” - means a program in which the Tennessee Department of Transportation may act as a secondary surety for select Certified Small Businesses.
- (3) “Certification of Proficiency” - means a certificate awarded to Certified Small Businesses meeting the Minimum Curriculum Standards of Proficiency (See Rule 1680-8-4-.02(7) herein).
- (4) “Certified Small Business” - means a small business that has been approved by the Department as meeting the statutory criteria to participate (if selected by the Department) in the Construction Management Development Program (CMDP) and/or Bond Guarantee Program (BGP). A business meets the statutory criteria

if the business (including its affiliates) is a certified disadvantaged business enterprise (DBE) as defined by 49 CFR Part 26. Also, a business meets the statutory criteria if the business satisfies all the requirements of a disadvantaged business enterprise (DBE) as defined by 49 CFR Part 26 other than the requirement that the business is owned by socially and economically disadvantaged individuals as defined in 49 CFR Part 26.5.

- (5) “Construction Management Development Program” or “CMDP” - means an original program of instruction taught to groups of individuals who are owners of Certified Small Businesses to enhance, improve, or develop skills needed to successfully perform construction projects. This program may consist of classroom instruction and on-the-job instruction.
- (6) “Department” - means the Tennessee Department of Transportation.
- (7) “Minimum Curriculum Standards of Proficiency” - means established minimum requirements that a Certified Small Business owner must attain to demonstrate proficiency and capability regarding the instruction received through the classroom instruction portion of the CMDP.
- (8) “Small Business” - means a business (including its affiliates) that over the business’s previous three fiscal years has had Average Annual Gross Receipts (See Rule 1680-8-4-.02(1) herein) not in excess of the business size limitations established in 49 CFR Part 26.65, or as any such limitation may be adjusted for inflation by the United States Secretary of Transportation as provided in 49 CFR Part 26.65.
- (9) “Small Business Development Program Office” - means the office of the Tennessee Department of Transportation that has the responsibility of monitoring and enforcing the Department’s CMDP and BGP.
- (10) “Tennessee Department of Transportation Small Business Development Review Committee” - means the committee within the Tennessee Department of Transportation which renders final decisions of the Department on the CMDP and BGP.

Authority: T.C.A. §4-3-2305.

1680-8-4-.03 BOND GUARANTEE PROGRAM.

- (1) Department Requirements and Limitations.
 - (a) The Department may guarantee sureties participating in the BGP against a portion of their losses incurred and paid as a result of a Certified Small Business’s breach of the terms of a bid bond and/or contract bond on any eligible contract. The Department may guarantee up to ninety percent (90%) of a surety bond amount of two hundred fifty thousand dollars (\$250,000) or less and up to eighty percent (80%) of a surety bond amount greater than two hundred fifty thousand dollars (\$250,000) if such surety bond is provided by an approved surety. The surety must obtain the Department’s approval before a guaranteed bond can be issued. The Department may determine the bond guarantee amount based on the criteria outlined in Rule 1680-8-4-.03(4) herein and the availability of funds. Participation in the BGP is limited due to the statutory mandate that in no event shall the total amount guaranteed under this program at any given time exceed five million dollars (\$5,000,000).
- (2) A surety who desires to participate in the BGP shall submit an Application for Surety Participation Form to the Tennessee Department of Transportation Small Business Development Program Office.

- (3) Certified Small Business Eligibility Requirements/Limitations.
- (a) Eligibility to participate in the BGP shall be specifically limited to Certified Small Businesses that have attained a Certificate of Proficiency by meeting the Minimum Curriculum Standards of Proficiency in the CMDP or that have received an exemption from the CMDP (See Rule 1680-8-3-.09).

- (4) The Department is authorized to expend funds from the State highway fund to fund administrative expenses and fund any losses that may arise under the BGP. In no event shall the total amount guaranteed under this program at any given time exceed five million dollars (\$5,000,000). Therefore, the number, size, and availability of the bond guarantees shall be limited. Obtaining a Certification of Proficiency does not ensure that a Certified Small Business will receive a bond guarantee. The Department may use the following criteria to determine which Certified Small Businesses may participate in the BGP and receive a bond guarantee (it shall be the responsibility of the applicant to provide evidence of the following criteria):

- (a) Administration and Management of Business.

The applicant shall provide adequate evidence that it:

1. Holds all current and relevant licenses and meets all other legal requirements regarding the Certified Small Business;
2. Shows capability to develop an overall business plan;
3. Maintains an adequate credit history;
4. Maintains adequate staff and employees required to carry out the work associated with the Certified Small Business;
5. Maintains a payroll system set up to feed accurate and complete information into the job costing system;
6. Is able to generate accurate financial statements in accordance with generally accepted accounting principles; and
7. Has policies and procedures regarding timely billing and collection from customers.

- (b) Bidding/Estimates.

The applicant shall provide adequate evidence that it:

1. Has an understanding how to implement all requisite steps in the preparation of Department bids; and
2. Has competence in accurately estimating project costs.

- (c) Contract Negotiating and Knowledge.

The applicant shall provide adequate evidence that it:

1. Has an understanding of contract terms concerning the rights, obligations, and liabilities for Small Businesses;
2. Has an understanding of the basic elements of Department contracts; and
3. Has an ability to adequately negotiate, draft, and interpret subcontracts.

(d) Project Planning.

The applicant shall provide adequate evidence that it:

1. Has capability in scheduling and phasing the work of a project and in allocating labor to timely complete the project;
2. Has skill in developing schedules for ordering and assuring delivery of materials and equipment and hiring of work force; and
3. Has knowledge of the reports and other paperwork required by the Department and/or the prime contractor.

(e) Project Performance.

The applicant shall provide adequate evidence that it:

1. Maintains a system of project monitoring that includes job-site inspections by management as well as periodic reporting from its project superintendent;
2. Maintains a field monitoring and reporting system to warn of any deviations from project schedule or cost overruns;
3. Maintains a reporting system that will keep detailed records of the time expended and materials used on a project;
4. Has capability to maintain an updated and accurate job costing system;
5. Maintains a system for dealing with change orders; including requiring written change order and method for calculating prices to cover the changes; and
6. Demonstrates knowledge of project closeout procedures.

(f) Inability to obtain surety bond.

The applicant shall provide adequate evidence that it:

1. Has made at least one (1) unsuccessful attempt to obtain a surety bond.

(5) **Guaranteed Bond Limit.** No Certified Small Business may have more than two (2) Department guaranteed bonds at any one time, and the total amount of such guaranteed bonds shall not exceed one million dollars (\$1,000,000).

(6) **Bond Applications.**

- (a) When requested by the Certified Small Business, the Department may provide assistance in preparing bond applications that are to be presented to surety companies to obtain a bonding capacity.
 - (b) When the Certified Small Business has developed a complete package that is deemed acceptable, it will be forwarded to a surety company that has agreed to participate in this program.
- (7) The Department may assist a Certified Small Business, which has been accepted into the BGP, in obtaining a surety bond.
- (a) Once the surety company decides to execute the bond on the basis of the BGP, a Justification for Bond Guarantee form will be submitted by the surety company to the Department.
 - (b) Upon receipt of the Justification for Bond Guarantee form, the Department may execute and return the Bond Guarantee Agreement form to the surety company.
- (8) Project monitoring and technical assistance may be provided to all Certified Small Businesses receiving a bond guarantee.

Authority: T.C.A. §4-3-2305.

1680-8-4-.04 REVOCATION.

- (1) The Department's acceptance of a Certified Small Business in the BGP may be revoked if the Department finds the business no longer meets the requirements of a Certified Small Business.
- (2) A Certified Small Business's participation in the BGP may be revoked if the Department finds the business no longer meets the requirements set forth in Rule 1680-8-4-.03(4)(a)(1) herein.
- (3) A business's participation in the BGP may be revoked if the Department finds the business willfully made a false, deceptive, or fraudulent statement in any document submitted to the Department.
- (4) Prior to revoking a Certified Small Business's participation in the BGP, written notice shall be sent from the Small Business Development Program Office explaining why the Department's acceptance of the Certified Small Business in the BGP shall be revoked. The Certified Small Business shall have fifteen (15) days to respond to the deficiencies. If the Certified Small Business does not respond or if the Certified Small Business's explanation is not sufficient, then the Certified Small Business shall be advised by certified mail, return receipt requested, of the preliminary finding of ineligibility for retention of participation in the BGP. Reasons shall be given for the preliminary finding.
- (5) The Certified Small Business shall then have fifteen (15) days after receipt of notice to submit a written appeal to the Tennessee Department of Transportation Small Business Development Review Committee, which may reverse or uphold the Small Business Development Program Office's preliminary finding in its final decision.
- (6) Should the Certified Small Business not appeal within the fifteen (15)-day period, then the preliminary finding of the Small Business Development Program Office shall become the final decision of the Tennessee Department of Transportation Small Business Development Review Committee.
- (7) No application fee or registration fee shall be refunded upon revocation.

Authority: T.C.A. §4-3-2305.

1680-8-4-.05 FORMS.

- (1) The following listed forms are hereby incorporated by reference and made a part of the Rules of the Department:
 - (a) Application for Bond Guarantee Program (BGP).
 - (b) Application for Small Business Certification.
 - (c) Agreement for Surety Participation Form.
 - (d) Justification for Bond Guarantee Form.
 - (e) Bond Guarantee Agreement Form.
 - (f) Application for Surety Bond Guarantee Assistance.

- (2) Copies of these forms are to be obtained from the Tennessee Department of Transportation/Civil Rights Office, Small Business Development Program, Suite 1800, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0347.

Authority: T.C.A. §4-3-2305.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005. (01-29)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Region II Conference Room of the Tennessee Wildlife Resources Agency, Ray Bell Region II Building, 5105 Edmondson Pike, Nashville, Tennessee, at 9:00 a.m., local time, on the 31st day of March, 2005.

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

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

SUBSTANCE OF PROPOSED RULES
CHAPTER 1660-1-2
RULES AND REGULATIONS FOR BIRDS
AMENDMENTS

Rule 1660-1-2-.02 (a) Migratory Bird Hunting is amended by inserting a new paragraph to read as follows:

6. Blinds not chosen at the blind allocation drawing or canceled by Tennessee Wildlife Resources Agency will become temporary blind sites for the year of the drawing. If the primary blind permittee or signon(s) do not meet the deadline for having the blind on site, or violates any other provision of this rule, they forfeit their opportunity to participate in any duck blind drawing the following year. The primary waterfowl blind permittee is the person who was drawn for a permanent draw blind or who registers a permanent registered blind. A signon is a person other than the primary blind permittee who possesses a waterfowl blind permit for said blind

Rule 1660-1-2-.02 (2), Migratory Bird Hunting, is amended by inserting a new paragraph (a) to read as follows:

- (a) A.E.D.C. (except Woods Reservoir), Anderson Tully, Barkley Unit II, Bogota (Pool 1), Cottonport, Yellow Creek, Long Island, Lick Creek, New Hope, Percy Priest - Unit II, Candies Creek, Roger's Creek, Johnson Bottoms, Mark's Creek Unit of Cheatham Lake, and areas as specified under proclamation of Cheatham Lake, White Oak, that area of Barkley Reservoir as specified under annual proclamation, that portion of Old Hickory- Unit III, from Mile No. 268 upstream to the abandoned Lock and Dam Site No. 6 at approximately Mile No. 281, Ernest Rice, Sr., Obion River, Moss Island, Gooch-Units B, C and E, Shelby Forest State Park and Wolf River.
 1. No permanent blinds allowed.
 2. Decoys must be picked up each day.
 3. Temporary blinds must be built the day of the hunt and hunters using temporary blinds must remove or destroy such blinds at the end of the day's hunt.

Rule 1660-1-2-.02 Migratory Bird Hunting is amended by inserting a new paragraph to read as follows:

- (e) Bogota Wildlife Management Area (Except Pool 1)
 1. Waterfowl hunting is restricted to temporary blind sites as defined herein.
 - (i) A temporary blind is either a structure assembled or placed for a hunt or boat that is used for hunting; or, a site consisting of the use of natural vegetation or conditions for concealment for a three-day hunt.

2. Hunters are restricted to permitted areas only.
3. All hunters in a party are required to hunt in the same area of the pool.
4. Decoys and temporary blinds may be left out over the three-day hunt but must be removed upon completion of the hunt on the last day.
5. No motorized vessels allowed.
6. Hunters are required to park in designated parking areas only.

Authority: T.C.A. §§70-1-206 and 70-4-107

CHAPTER 1660-1-5
RULES AND REGULATIONS FOR FISHING
AMENDMENT

Rule 1660-1-5-.03 (7), TWRA Lakes, is amended by inserting a new paragraph (7) to read as follows:

- (7) Hunting is permitted during the regular hunting season on the following lakes and adjacent state lands, except on areas posted as safety zones: Garrett Lake, VFW Lake, Whiteville Lake, Coy Gaither Bedford Lake, Laurel Hill Lake, Carroll Lake (no big game hunting allowed on Carroll Lake and State owned land adjacent thereto), and Reelfoot-Indian Creek Watershed Lakes. Trapping is allowed on Reelfoot-Indian Creek Watershed Lakes as set out in statewide regulations. Waterfowl hunting is permitted from temporary or natural blinds only on Garrett Lake, Laurel Hill Lake, Whiteville Lake, and Reelfoot-Indian Creek Watershed Lakes. Blinds and decoys must be removed daily from Garrett Lake, Whiteville Lake, and Reelfoot-Indian Creek Watershed Lakes. Firearms are prohibited on all areas except those open to hunting. Boats may be used for waterfowl hunting on Garrett Lake, Laurel Hill Lake, Whiteville Lake, and Reelfoot-Indian Creek Watershed Lakes.

Authority: T.C.A. §§70-1-206 and 70-4-107

CHAPTER 1660-1-8
RULES AND REGULATIONS OF HUNTS

PERMIT REQUIREMENTS - WILDLIFE MANAGEMENT AREAS, REFUGES AND OTHER
AGENCY CONTROLLED LANDS

AMENDMENT

Rule 1660-1-8-.03 Paragraph (3) is amended by deleting it in its entirety and inserting the following language so it shall read:

- (3) Before any person, except those under 16 years of age hunting small game and waterfowl, may hunt on a wildlife management area or refuge, he must possess a permit as outlined below.

(a) A WMA Small Game permit is required on the following wildlife management areas and refuges:

AEDC	Eagle Creek	New Hope
Alpine Mountain	Eagle Lake Refuge	Nolichucky
Arnold Hollow	Ernest Rice Sr.	North Chickamauga Creek
Bark Camp Barrens	Foothills	Oak Ridge
Barkley Units I & II	Forks of the River	Obion River
Bean Switch Refuge	Haley-Jaqueth	Old Hickory (Unit I)
Beaver Dam Creek	Harmon Creek	Old Hickory Lock 5 Refuge
Big Sandy (including Gin Creek)	Haynes Bottom	Pea Ridge
Black Bayou Refuge	Henderson Island Refuge	Percy Priest (Units I & II)
Bogota	Hick Hill	Perryville
Bridgestone/Firestone Centennial Wilderness	Hickory Flat	Prentice Cooper
Browntown	Hiwassee Refuge	Rankin
Buffalo Springs	Holly Fork	Royal Blue
Camden Units I & II	Hop-In Refuge	Shelby Forest
Catoosa	Jackson Swamp	Shelton Ferry Wetland
Cheatham	Jarrell Switch Refuge	Sundquist
Cheatham Lake	John Tully	Tellico Lake
Chickamauga (Candies reek, Johnson Bottoms, Rogers reek, Yellow Creek Units)	Kingston Refuge	Tie Camp
Chuck Swan	Kyker Bottoms Refuge	Tigrett
Cold Creek	Laurel Hill	Watts Bar (Long Island Unit)
Cordell Hull	Lick Creek	West Sandy
Cordell Hull Refuge	Lick Creek Bottoms	White Lake Refuge
Cove Creek	Maness Swamp Refuge	White Oak
C. M. Gooch	Maple Springs Wetland	Williamsport
Cypress Pond	Mingo Swamp Wetland	Wolf River
	Moss Island	Woods Reservoir Refuge
	MTSU	Yanahli
	Natchez Trace	Yuchi Refuge at Smith Bend

A WMA small game permit is required for individuals participating in dog training. A field trial permit is required on Percy Priest WMA and the Tellico Lake – McGhee-Carson Unit.

(b) A WMA Small Game and Waterfowl permit is required for hunting waterfowl on the following wildlife management areas and refuges:

AEDC	Cordell Hull Refuge	Lick Creek Bottoms
Barkley Units I & II	C.M. Gooch	Mingo Swamp Wetland
Big Sandy (including Gin Creek)	Ernest Rice Sr.	Moss Island
Bogota	Harmon Creek	New Hope
Camden Units I & II	Haynes Bottom	Nolichucky
Cheatham Lake	Hiwassee Refuge	North Chickamauga Creek
Chickamauga (Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units)	Holly Fork	Oak Ridge
Cold Creek	Jackson Swamp	Obion River
Cordell Hull	Jarrell Switch Refuge	Old Hickory (Unit I)
	Moss Island	Shelby Forest
	Lick Creek	Tigrett

Watts Bar (Long Island Unit)
West Sandy

White Oak
Yanahli

Yuchi Refuge at Smith Bend

- (c) A WMA big game permit is required for hunting deer, bear, boar, feral hogs, and turkey on the following wildlife management areas and refuges:

AEDC	Ernest Rice Sr.	New Hope
Alpine Mountain	Fall Creek Fall State Park	Nolichucky
Arnold Hollow	Foothills	North Chickamauga Creek
Bark Camp Barrens	Forks of the River	Oak Ridge
Barkley Units I & II	Gallatin Steam Plant	Obion River
Bean Switch Refuge	Harmon Creek	Old Hickory (Unit I)
Beaver Dam Creek	Haynes Bottom	Old Hickory Lock 5 Refuge
Big Sandy (including Gin Creek)	Henderson Island Refuge	Pea Ridge
Bogota	Hick Hill	Percy Priest (Units I & II)
Bridgestone/Firestone Centennial Wilderness	Hickory Flat	Perryville
Browntown	Hiwassee Refuge	Prentice Cooper
Buffalo Springs	Holly Fork	President's Island
C. M. Gooch	Hop-In Refuge	Rankin
Camden Units I & II	International Paper	Royal Blue
Catoosa	Jackson Swamp	Shelby Forest
Cheatham	Jarrell Switch Refuge	Shelton Ferry Wetland
Cheatham Lake	John Tully	Sundquist
Cherokee	Kingston Refuge	Tellico Lake
Chickamauga (Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units)	Laurel Hill	Tie Camp WMA
Chuck Swan	Lick Creek	Tigrett
Cold Creek	Lick Creek Bottoms	Watts Bar (Long Island Unit)
Cordell Hull	Lovell Field	West Sandy
Cordell Hull Refuge	Maness Swamp Refuge	White Lake Refuge
Cove Creek	Maple Springs Wetland	White Oak
Cypress Pond	Mingo Swamp Wetland	Williamsport
Eagle Creek	Moss Island	Wolf River
Eagle Lake Refuge	MTSU	Woods Reservoir Refuge
	Natchez Trace	Yanahli
	Nathan B. Forrest State Historical Area	Yuchi Refuge at Smith Bend

- (d) A WMA Small Game or WMA Small Game and Waterfowl permit is required to trap on all areas that require a small game hunting permit.

Authority: T.C.A. §§70-1-206 and 70-4-107

Rule 1660-1-8-.05(3)(d) Permit Applications and Drawings is amended by deleting it in its entirety and by substituting instead the following new paragraph:

- (d) Individuals must produce the following licenses and permits in order to compete in the drawing:

All areas (except Reelfoot)-Annual Hunting and Fishing License, Annual Small Game and Waterfowl Permit, or Sportsman License, or any Lifetime Sportsman License.

Reelfoot - Annual Hunting and Fishing License, Annual Reelfoot Preservation Permit, Annual Waterfowl License or Sportsman License, or any Lifetime Sportsman License.

Authority: T.C.A. §§70-1-206 and 70-4-107

Rule 1660-1-8-.05 Permit Applications and Drawings is amended by inserting a new paragraph (4) and renumbering succeeding paragraphs to read as follows:

- (4) Waterfowl hunt drawing and allocation procedure on Bogota Wildlife Management Area (except Pool 1).
 - (a) Each individual desiring to participate in a quota waterfowl hunt must complete a hunt application supplied by the Tennessee Wildlife Resources Agency.
 - (b) Applicants may submit only one application. If an individual's name appears on more than one application, that individual will be rejected, his fee forfeited, and will be subject to prosecution.
 - (c) Youth ten (10) to sixteen (16) years of age, prior to the hunt, may apply, however they must apply in a party of at least one adult eighteen (18) years of age or older.
 - (d) All information requested on the application must be completed by the applicant. Failure to clearly specify all information will result in the application being returned.
 - (e) Applications must be received by the Tennessee Wildlife Resources Agency as specified on the application. Applications received after this deadline will be returned.
 - (f) All persons wishing to hunt together as a party must submit their applications as one unit, indicating identical hunt choices on all individual applications. The number of applicants comprising a party may not exceed four (4) members. If the number exceeds the maximum party size, all applications of that party will be returned.
 - (g) Each application must be accompanied by a \$10.00 non-refundable handling fee for each applicant thereon.
 - (h) Successful applicants must also possess appropriate licenses and permits in order to participate in the hunts.
 - (i) Priority drawings and procedures for qualifying with priority status will be established as indicated on applications.
 - (j) A computer drawing will be held to determine successful applicants. Any vacancies will not be filled for that hunt date.

Authority: T.C.A. §§70-1-206 and 70-4-107

**CHAPTER 1660-1-15
ANIMAL IMPORTATION**

NEW RULE

Rule 1660-1-15 Animal Importation is amended by inserting a new rule to read as follows:

1660-1-15-.02 IMPORTATION OF WILDLIFE CARCASSES, PARTS AND PRODUCTS

- (1) No person may import, transport, or possess in Tennessee a cervid carcass or carcass part from a state or province that has a known case of chronic wasting disease (CWD) except as provided herein:
 - (a) Meat that has bones removed.
 - (b) Meat that has no portion of the spinal column or head attached.
 - (c) Antlers, antlers attached to cleaned skull plates, or cleaned skulls (where no meat or tissues are attached to the skull.)
 - (d) Cleaned teeth.
 - (e) Finished taxidermy and antler products.
 - (f) Hides and tanned products.

Authority: T.C.A. §§70-1-206 and 70-4-107

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2005.
(01-27)



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 January 3, 2005 and ending January 31, 2005

A handwritten signature in black ink that reads 'Riley C. Darnell'. The signature is written in a cursive style with a large 'R' and 'D'.

RILEY C. DARNELL
Secretary of State