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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 Financial Institutions, 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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OFFICE OF THE ATTORNEY GENERAL

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

I. PURPOSE

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

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

II. SCOPE

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

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

1. The exercise of the power of eminent domain;

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2. The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;
3. Orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute; and
4. The discontinuation of government programs.

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

III. GENERAL PRINCIPLES

A. Constitutional and Statutory Framework

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

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

B. Nature of a Taking

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

1. Physical Occupancy

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

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2. **Physical Invasion**

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

3. **Regulatory Takings**

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

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

- a. Whether the regulation denies the landowner all economically viable use of his property or substantially interferes with his reasonable investment-backed expectations. In this regard, the timing of the regulatory enactment with respect to the landowner's acquisition of title may be relevant, but not necessarily dispositive.
- b. Whether the regulation is not reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Regulation of an individual's property that conditions approval of a permit/development on the dedication of some property to public use must not be disproportionate to the degree to which the individual's property use is contributing to the overall problem. The less direct, immediate and demonstrable the contribution of the property-related activity to the harm to be addressed, the greater the risk that a taking will be found.
- c. The degree to which a regulatory action closely resembles, or has the effect of, physical invasion or occupation of property. For example, an intended policy or action that totally abrogates an essential property interest, such as the right to exclude others by imposing an access easement, may, in certain circumstances, constitute a taking. See discussion in B. 2. above and C. 1. below.

C. **Special Situations and Suggested Procedures**

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

1. **Permitting and Certification Programs**

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

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

2. Assessing Economic Impact of the Regulation as Applied

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

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

3. The "Parcel as a Whole" Analysis

In determining the economic impact of a proposed or intended government action, an agency should consider the impact on the "parcel as a whole," and not merely the part of the parcel that is subject to regulation. The parcel as a whole is not limited by its geographic dimensions, but also has a temporal aspect defined by the term of years

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of the owner's interest in the land. Generally, if an owner has been denied economic use of a segment of a parcel, but retains viable economic use of other segments of the same parcel, a taking may not result.

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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 12.25%.

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.

Greg Gonzales

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of September 2006 is 9.20 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 5.20` 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.

Greg Gonzales

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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) 741-3072.

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-01	July 3, 2006	1240 Human Services Family Assistance Division	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50 Financial Eligibility Requirements Families First Program</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	July 3, 2006 through December 15, 2006
07-02	July 3, 2006	0780 Commerce and Insurance Division of Regulatory Boards	Rulemaking Hearing Rules	New Rules	<i>Chapter 0780-5-12 Home Inspectors</i> 0780-5-12-.01 Purpose 0780-5-12-.02 Definitions 0780-5-12-.03 Application for License 0780-5-12-.04 Application Requirements 0780-5-12-.05 Renewal Requirements 0780-5-12-.06 Fees 0780-6-12-.07 Qualifying and Continuing Education 0780-5-12-.08 Citations 0780-5-12-.09 Civil Penalties 0780-5-12-.10 Standards of Practice 0780-5-12-.11 Code of Ethics	Christy A. Allen Commerce and Insurance OGC 500 J Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	Sept 16, 2006
07-03	July 10, 2006	1200 Health TN Medical Laboratory Board Health Related Boards	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-6-3 General Rules Governing Medical Laboratories</i> 1200-6-3-.12 Referral of Cultures to the Department of Health 1200-6-3-.16 Alternate Site Testing	Robert J. Kraemer, Jr., Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Sept 23, 2006
07-04	July 10, 2006	1045 Optometry	Rulemaking Hearing Rules	Amendments	<i>Chapter 1045-2 General Rules Governing the Practice of Optometry</i> 1045-2-.09 Ocular and Contact Lens Prescriptions and Office Equipment 1045-2-.10 Disciplinary Actions, Civil Penalties, Declaratory Orders, Assessment of Costs, and Subpoenas 1045-2-.11 Scope of Practice	Nicole Armstrong Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Sept 23, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-05	July 10, 2006	0460 Dentistry	Rulemaking Hearing Rules	Amendments	<i>Chapter 0460-1 General Rules</i> 0460-1-.05 Continuing Education and C.P.R. 0460-2-.03 Limited and Educational Limited Licensure Process 0460-2-.06 Specialty Certification 0460-2-.07 Anesthesia and Sedation	Ernest Sykes Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Sept 23, 2006
07-06	July 10, 2006	1370 Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists	Rulemaking Hearing Rules	Amendments	<i>Chapter 1370-2 General Rules Governing Hearing Instrument Specialists</i> 1370-2-.08 Examinations 1370-2-.12 Continuing Education, Calibration Certificates, and Bills of Sale 1370-2-.19 Council Meetings, Officers, Consultants, Records, and Declaratory Orders 1370-2-.20 Advertising	Mary J. Presley Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Sept 23, 2006
07-09	July 13, 2006	1155 Podiatric Medical Examiners	Rulemaking Hearing Rules	New Rules	<i>Chapter 1155-4 General Rules Governing Orthotists, Prosthetists, and Pedorthists</i> 1155-4-.01 Orthotists 1155-4-.02 Prosthetists 1155-4-.03 Pedorthists 1155-4-.04 Restrictions on the Practice of Orthotists, Prosthetists, and Pedorthists 1155-4-.05 Necessity of Licensure 1155-4-.06 Qualifications for Licensure 1155-4-.07 Procedures for Licensure 1155-4-.08 Examinations 1155-4-.09 Fees 1155-4-.10 Renewal of Licensure 1155-4-.11 Retirement and Reactivation 1155-4-.12 Continuing Education 1155-4-.13 Disciplinary Actions, Subpoenas, Declaratory Orders, and Screening Panels 1155-4-.14 Advertising 1155-4-.15 Change of Address and/or Name 1155-4-.16 "Grandfather" Provisions for Licensure 1155-4-.17 Sale of Over-the-Counter and Off-the-Shelf Devices	Ernest Sykes, Jr. Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Sept 26, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-09, cont.					1155-4-.20 Pharmacists, Home Medical Equipment Providers, and Orthosis Manufacturers 1155-4-.21 Therapeutic Footwear		
07-10	July 13, 2006	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-11 Rules and Regulations Governing Shooting</i> 1660-1-11-.02 Operation of Private Wildlife Preserve	Sheryl Holtam TWRA P.O. Box 40747 Nashville TN 37204 (615) 781-6606	Sept 26, 2006
07-12	July 17, 2006	0800 Labor and Workforce Development Boiler and Elevator Inspection Elevator Safety Board	Proposed Rules	Amendments	<i>Chapter 0800-3-4 Elevators, Dumbwaiters, Escalators, and Other Lifts</i> 0800-3-4-.01 Definitions 0800-3-4-.03 Design, Installation and Alterations 0800-3-4-.04 Inspection and Tests 0800-3-4-.06 Qualifications and Licensing of Inspectors 0800-3-4-.09 Specifications for Tests and Inspections <i>Chapter 0800-3-6 Special Purpose Personnel Elevators</i> 0800-3-6-.01 Safety Standards <i>Chapter 0800-3-9 Operation Under Emergency Conditions</i> 0800-3-9-.01 Safety Standards <i>Chapter 0800-3-10 Fees</i> 0800-3-10-.01 Fees <i>Chapter 0800-3-14 Rules of Procedure for Hearing Contested Cases Before the Elevator Safety Board</i> 0800-3-14-.01 Appeals	Sydné Ewell Legal Counsel Labor and Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243 (615) 741-4356	Nov 28, 2006
07-14	July 18, 2006	0400 Environment and Conservation Division of Remediation	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Inactive Hazardous Substance Site Remedial Action Program</i> 1200-1-13-.03 Remedial Action Fund	Steve Goins Remediation Environment and Conservation 4th Fl L&C Annex 401 Church St Nashville TN 37243-1538 (615) 532-8599	Oct 1, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-15	July 18, 2006	1680 Transportation Construction	Rulemaking Hearing Rules	New Rules	<i>Chapter 1680-5-3</i> <i>Prequalification of Contractors</i> 1680-5-3-.01 Authority, Purpose and General Requirements 1680-5-3-.02 Definitions 1680-5-3-.03 Prequalification Office 1680-5-3-.04 Prequalification Application 1680-5-3-.05 Determination of Prequalification Status 1680-5-3-.06 Effective Term and Renewal of Prequalification 1680-5-3-.07 Modification, Revocation and Disqualification 1680-5-3-.08 Appeals 1680-5-3-.09 Special Prequalification Requirements 1680-5-3-.10 Bidding, Joint Ventures, and Affiliates	John Rienbold Transportation Suite 300 Polk Bldg 505 Deaderick St Nashville TN 37243 615-741-2941	Oct 1, 2006
07-16	July , 2006	1360 State Division of Business Services	Proposed Rules	Amendments	1360-6-1-.02 Certification Qualifications 1360-6-1-.05 Continuing Education Course Requirements	Bob Grunow Business Services State TN Twr 6th Fl 312 8th Ave N Nashville TN 37243 615-741-0584	Nov 28, 2006
07-18	July 24, 2006	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendments	<i>Chapter 1660-1-28</i> <i>Rules And Regulations Governing Licenses, Permits and Fees</i> 1660-1-28-.01 Basic Resident Licenses and Fees 1660-1-28-.03 Wildlife Management Area and Designated Area Permits and Fees	Sheryl Holtam TWRA P.O. Box 40747 Nashville TN 37204 (615) 781-6606	Oct 7, 2006
07-19	July 24, 2006	0620 Finance and Administration Office of Inspector General	Proposed Rules	New Rules	<i>Chapter 0620-4-1</i> <i>Incentive Program for the Office of Inspector General (Rewards information relating to TennCare Fraud)</i> 0620-4-1-.01 Definitions 0620-4-1-.02 Eligibility 0620-4-1-.03 Payment of the reward	David Himmelreich, Office of Inspector General P.O. Box 282368 Nashville, TN 37228 (615)-687-7200	Nov 28, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-20	June 26, 2006	0030 Aging and Disability	Rulemaking Hearing Rules	Amendments	<i>Chapter 0030-1-10 Financial Management Standards and Procedures</i> 0030-1-10-.01 Intrastate Funding Formula	Nancy C. Peace Andrew Jackson Bldg 500 Deaderick St Suite 825 Nashville TN 37243-0860 (615) 741-2056	Oct 9, 2006
07-22	June 27, 2006	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendments	<i>Chapter 1660-1-18 Rules and Regulations Live Wildlife</i> 1660-1-18-.05 Special Provisions	Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	Oct 10, 2005
07-23	July 27, 2006	0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendmnts	<i>Chapter 0450-3 General Rules Governing Clinical Pastoral Therapists</i> 0450-3-.08 Examinations	Nicole Armstrong Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Oct 10, 2005
07-24	July 27, 2006	1180 Psychology	Rulemaking Hearing Rules	Amendments	<i>Chapter 1180-1 General Rules Governing the Practice of Psychologists Senior Psychological Examiners Psychological Examiners and Certified Psychological Assistants</i> 1180-1-.02 Necessity of Licensure and Certification <i>Chapter 1180-2 Rules Governing Psychologists</i> 1180-2-.02 Qualifications for Licensure 1180-2-.03 Procedures for Licensure <i>Chapter 1180-4 Rules Governing Certified Psychological Assistants</i> 1180-4-.03 Procedures for Certification	Nicole Armstrong Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Oct 10, 2005

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-25	July 27, 2006	1730 Veterinary Medical Examiners	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1730-1 General Rules Governing Veterinarians</i> 1730-1-.16 License</p> <p><i>Chapter 1730-4 General Rules Governing Certified Animal Control Agencies</i> 1730-4-.07 Requirements for Inspection 1730-4-.11 Unprofessional Conduct 1730-4-.13 Dispensing or Otherwise Distributing Pharmaceuticals</p> <p><i>Chapter 1730-5 General Rules Governing Certified Animal Euthanasia Technicians</i> 1730-5-.01 Definitions 1730-5-.14 Dispensing or Otherwise Distributing Pharmaceuticals</p>	Nicole Armstrong Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Oct 10, 2005
07-26	July 27, 2006	1020 Nursing Home Administrators	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1020-1 General Rules Governing Nursing Home Administrators</i> 1020-1-.03 Board Officers, Records, Meetings, Consultants, Change of Address and/or Name, and Declaratory Orders 1020-1-.06 Preceptors, Administrators-In-Training and Administrators-in-Training Programs 1020-1-.08 Procedures for Licensure 1020-1-.12 Continuing Education 1020-1-.12 Continuing Education 1020-1-.18 Advertising</p>	Mary J. Presley Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Oct 10, 2005
07-27	July 27, 2006	0880 Medical Examiners	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0880-2 General Rules and Regulations Governing the Practice of Medicine</i> 0880-2-.08 Examination</p> <p><i>Chapter 0880-9 General Rules and Regulations Governing Radiologist Assistants</i> 0880-9-.08 Radiologist Assistant Scope of Practice and Role Delineation</p>	Robert J. Kraemer Health OGC 220 Athens Way Suite 210 Plaza I, MetroCenter Nashville TN 37243 (615) 741-1611	Oct 10, 2005

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-29	July 28, 2008	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.04 Covered Services 1200-13-13-.10 Exclusions		Oct 11, 2005
07-30	July 28, 2008	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-14 TennCare Medicaid</i> 1200-13-14-.04 Covered Services 1200-13-14-.10 Exclusions		Oct 11, 2005
07-31	July 31, 2006	1260 Real Estate Commission	Rulemaking Hearing Rules	Amendments	<i>Chapter 1260-1 Licensing</i> 1260-1-.04 Licenses <i>Chapter 1260-2 Rules of Conduct</i> 1260-2-.01 Supervision of Affiliate Brokers 1260-2-.03 Offices 1260-2-.08 Offers to Purchase 1260-2-.12 Advertising <i>Chapter 1260-5 Educational Requirements</i> 1260-5-.12 Affiliate Brokers New Rule 1260-2-.36 Exclusive Buyer Representation Agreements	J. Wayne Pugh Commerce and Insurance Office of Legal Counsel 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	Oct 14, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-33	July 31, 2006	0400 Environment and Conservation Division of Water Supply	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-5-1 Public Water Systems</i> 1200-5-1-.04 Definitions 1200-5-1-.06 Maximum Contaminant Levels 1200 5 1 .14 Laboratory Certification 1200-5-1-.19 Notification of Customers 1200-5-1-.20 Record Maintenance 1200-5-1-.31 Filtration and Disinfection 1200-5-1-.34 Drinking Water Source Protection 1200-5-1-.35 Consumer Confidence Reports 1200-5-1-.36 Disinfectant Residuals, Disinfectant Byproducts, and Disinfection Byproduct Precursors 1200-5-1-.37 Stage 2 Initial Distribution System Evaluation for Disinfection Byproducts 1200-5-1-.38 Locational Running Annual Average (LRAA) through the use of an Initial Distribution System Evaluation (IDSE) 1200-5-1-.39 Enhanced Treatment for Cryptosporidium	Robert L. Foster Water Supply 6th Fl L&C Twr Nashville Tn 37243-1549	Oct 14, 2006

ANNOUNCEMENTS

TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Visit the Tennessee Health Services and Development Agency web site at: http://www.tennessee.gov/hlda/health_plan_agency_meet.html for the latest Notice of Beginning of Review Cycle.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

For text of emergency rules filed prior to July, see T.A.R. cited,
<http://www.state.tn.us/sos/pub/tar/index.htm>

or

visit the Department of State's website,
http://www.state.tn.us/sos/rules/emergency/emer_index.htm

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency rules amending standards for biodiesel and biodiesel blends conveyed for consumption in Tennessee, Chapter 0080-5-12 Kerosene and Motor Fuels Quality Inspection Regulations, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed April 27, 2006; effective through October 9, 2006. (04-33)
- 0800 - Department of Labor - Division of Workers' Compensation - Emergency Rules amending the medical fee schedule and related system, Chapter 0800-2-18 Medical Fee Schedule, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed April 27, 2006; effective through October 9, 2006. (04-29)
- 0800 - Department of Labor - Division of Workers' Compensation - Emergency Rule amending 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges), Chapter 0800-2-18 Medical Fee Schedule, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed April 27, 2006; effective through October 9, 2006. (04-31)
- 1340 - Department of Safety - Division of Driver License Issuance - Emergency rules covering procedures for the issuance of certificates for driving, Chapter 1340-1-13 Classified and Commercial Drivers Licenses and Certificates for Driving, 4 T.A.R., Volume 32, Number 4 (April 13, 2006). Filed March 22, 2006; effective through September 3, 2006. (03-34)

PROPOSED RULES

DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 OFFICE OF INSPECTOR GENERAL

CHAPTER 0620-4-1 INCENTIVE PROGRAM FOR THE OFFICE OF INSPECTOR GENERAL (REWARDS INFORMATION RELATING TO TENNCARE FRAUD)

Presented herein are proposed rules of the Office of Inspector General, a division of the Department of Finance and Administration, submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Finance and Administration to promulgate this rule without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Department of Finance and Administration, Office of Inspector General, P.O. Box 282368, Nashville, TN 37228 and in the Department of State, 8th Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules, contact: Swigah Mwakipake, Office of Inspector General, Department of Finance and Administration, P.O. Box 282368, Nashville, TN 37228, (615)-687-7200.

The Text of the proposed rules is as follows:

NEW RULES

TABLE OF CONTENTS

0620-4-1-.01	Definitions
0620-4-1-.02	Eligibility
0620-4-1-.03	Payment of the reward

0620-4-1-.01 DEFINITIONS

- (1) "Commissioner" means the commissioner of Finance and Administration;
- (2) "Enrollee" shall mean any person eligible for and enrolled in the TennCare program;
- (3) "Fraud" means an intentional deception or misrepresentation made by a person including, but not limited to, a vendor, recipient, provider, or enrollee, with the knowledge that the deception or misrepresentation could result in some unauthorized benefit or payment to oneself or some other person. It includes any act that constitutes fraud under applicable federal or state law including,

PROPOSED RULES

but not limited to, the Tennessee Medicaid False Claims Act, compiled under Tenn. Code Ann. §§ 71-5-181 – 71-5-186;

- (4) “Inspector General” means the person who directs the Office of Inspector General, pursuant to Tenn. Code Ann. § 71-5-2502;
- (5) “Provider” shall mean an institution, facility, agency, person, corporation, partnership, unincorporated organization, nonprofit organization, or any person or entity directly or indirectly providing benefits, goods or services to a TennCare enrollee. Provider shall also mean a provider’s agent, contractor or subcontractor, such as a billing agent;
- (6) “TennCare” means the program administered by the Single State agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and section 1115 Research and Demonstration waiver granted to the State of Tennessee and any successor programs;
- (7) “Vendor” means any person, institution, agency, other entity or business concern providing services or goods authorized under title 71, chapter 5, part 1, and included, but is not limited to, any health maintenance organization, managed care organization, managed care contractor, administrative services organization, pharmacy benefit manager, prepaid limited health service organization, contractor or subcontractor;

Authority: T.C.A. §§ 71-5-2503 through 71-5-2505, 71-5-2507 through 71-5-2509, 71-5-2512 through 71-5-2515 and 71-5-181 through 71-5-186.

0620-4-1-.02 ELIGIBILITY

- (1) General rule. The Office of the Inspector General shall pay a monetary reward for information that leads to the arrest and conviction of any person or entity that has engaged in TennCare fraud. The determination of whether any person or entity meets the criteria for an award, and the amount of that award, is at the sole discretion of the Office of Inspector General (OIG). The OIG shall pay a reward only if a reward is not otherwise provided for by law. When the OIG applies the criteria specified under these rules to determine the eligibility and the amount of the reward, the OIG shall notify the beneficiary of the reward as specified below in 0620-4-1-.03.
- (2) A person or entity desiring consideration for a reward shall contact the Office of Inspector General through the TennCare Fraud and Abuse Hotline at 1-800-433-3982. Only information submitted by telephone is eligible for a reward.
- (3) Eligibility requirements. In order for a reporting person or entity to be eligible to receive a reward, the person or entity must:
 - (a) Provide the following identifying information:
 1. Full name
 2. Postal address
 3. Telephone number

PROPOSED RULES

4. Email address if available;
 - (b) Provide information relating to the activities of a specified person or entity who at the time the information is provided is not already the subject of a review or investigation by the OIG or any of its contractors; the Tennessee Department of Human Services (DHS), the TennCare Bureau, the Tennessee Bureau of Investigation, the Office of the Inspector General for the U.S. Department of Health and Human Services or their contractors, the U.S. Department of Justice, or the Federal Bureau of Investigation;
 - (c) State with specificity the time frame, and how the acts or omissions of the person or entity defrauded the TennCare program; and
 - (d) Provide information that results in a criminal conviction.
- (4) Notwithstanding any other provisions of these rules, the following persons are excluded from eligibility to receive a reward:
- (a) Any person who is, or was at the time of acquiring the information or making the report, an officer or an employee of any of the agencies or entities listed above in (3)(b) at the time he or she came into possession of, or divulged information leading to a conviction;
 - (b) Any person who is, or was at the time of acquiring the information or making the report, an immediate family member of an officer or an employee of any of the agencies or entities listed above in (3)(b) at the time he or she came into possession of, or divulged information leading to a conviction;
 - (c) Any other Federal, State, County, or Municipal employee, contractor, or grantee, if the information submitted came to their knowledge in the normal course of their official duties;
 - (d) A person or entity that illegally obtained the information submitted; or,
 - (e) A person or entity that participated in, benefited from, or acquiesced in the criminal conduct which resulted in a criminal conviction.

Authority: T.C.A. §§ 4-5-202; 71-5-2504 and 71-5-2512.

0620-4-1-.03 PAYMENT OF THE REWARD

- (1) The OIG shall post TennCare fraud convictions on the OIG website. This information will ordinarily be posted on the OIG website within sixty (60) days of the date of entry of the judgment of conviction.
 - (a) Any person who reported the information leading to a conviction for TennCare fraud shall have sixty (60) days from the date of the initial posting on the website to contact OIG and claim his/her reward. After the expiration of sixty (60) days the right to claim the reward will expire. A person(s) claiming the reward must be able to provide and verify his/her identity in order to obtain the reward monies.

PROPOSED RULES

- (b) If a person who reported the information leading to a conviction for TennCare fraud has become incapacitated or is deceased, any duly appointed executor, administrator, conservator, receiver, trustee, or legal guardian may claim the reward on behalf of the informant or the informant's estate. The representative must provide documentation sufficient in the judgment of the Office of Inspector General to establish the legal basis of the representative's authority. In order to claim the reward the representative must comply with all the requirements as provided under these rules
- (2) Amount and payment of a reward
- (a) The payment schedule for the incentive program for persons otherwise qualified to receive a reward is as follows:
 - 1. A person who provides information that leads to a class B felony conviction of TennCare fraud, and an offer of restitution of at least five thousand (\$5000) dollars, will receive a two hundred fifty (\$250) cash reward.
 - 2. A person who provides information that leads to a class C felony conviction of TennCare fraud, and an order of restitution of at least one thousand (\$1000) dollars will receive a two hundred dollar (\$200) cash reward.
 - 3. A person who provides information that leads to a class D felony conviction of TennCare fraud, and an order of restitution of at least one thousand (\$1000) dollars will receive a one hundred and fifty dollar (\$150) cash reward.
 - 4. A person who provides information that leads to a class E felony conviction of TennCare fraud, and an order of restitution of at least one thousand dollars (\$ 1,000) will receive a one hundred dollar (\$ 100) cash reward.
 - 5. A person who provides information that leads to an arrest and a class E felony conviction of TennCare fraud or any other offense related to the operation of the TennCare program will receive a fifty dollar (\$50) cash reward.
 - 6. A person who provides information that leads to an arrest and judicial or pre-trial diversion for TennCare fraud or any other offense related to the operation of the TennCare program will receive a fifty dollar (\$50) cash reward.
 - (b) Where a person provides the OIG with information that results in multiple TennCare fraud convictions, the OIG shall give a single reward for that information regardless of the number of persons who are convicted or the number of convictions obtained against one person as a result of that information. The single reward shall be in the amount corresponding to the higher conviction.
 - (c) No OIG employee has the authority to make any offer, or promise, or otherwise bind the OIG with respect to the payment or the amount of any reward under this section. Any such purported promise will be null and void.
- (3) All records concerning information received by the OIG from citizens regarding suspected crime, and concerning the reward program, are confidential investigative records of the OIG. The OIG shall not reveal to any person, entity, or organization, identifying information relating to citizens who provided the OIG with information under this section except as required by law.

PROPOSED RULES

- (4) If, after a reward is accepted, the OIG finds that the person who claimed the reward was ineligible to receive the reward, the OIG shall not be liable for such reward, and may seek to recover all monies received by means of remedies available at law and equity.

Authority: *T.C.A. §§ 4-5-202, 10-7-504(a)(2), 71-5-2504 and 71-5-2512.*

The proposed rules set out herein were properly filed in the Department of State on the 24th day of July, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2006. (07-19)

PROPOSED RULES

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

**CHAPTER 0800-3-4
ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER LIFTS**

**CHAPTER 0800-3-6
SPECIAL PURPOSE PERSONNEL ELEVATORS**

**CHAPTER 0800-3-9
OPERATION UNDER EMERGENCY CONDITIONS**

**CHAPTER 0800-3-10
FEES**

**CHAPTER 0800-3-14
RULES OF PROCEDURE FOR HEARING CONTESTED CASES
BEFORE THE ELEVATOR SAFETY BOARD**

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, Elevator Safety Board, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Division of the Department of Labor and Workforce Development, Andrew Johnson Tower, 2nd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243, and in the Administrative Procedures Division of the Department of State, William R. Snodgrass Tennessee Tower, 8th Floor, 312 8th Avenue North, Nashville, Tennessee, 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendments or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact Gary W. Cookston, Director, Division of Boiler and Elevator Inspection, Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower, 3rd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0663, telephone: (615) 532-1929.

The text of the proposed amendments is as follows:

AMENDMENTS

**CHAPTER 0800-3-4
ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER LIFTS**

Rule 0800-3-4-.01 Definitions is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

PROPOSED RULES

- (1) Board. The Tennessee Elevator Safety Board described in T.C.A. Section 68-121-102 of the Elevator Safety Act.
- (2) Commissioner. The Commissioner of Labor and Workforce Development.
- (3) Department. The Tennessee Department of Labor and Workforce Development.
- (4) Elevator, dumbwaiter, escalator, and other lift. Hoisting and lowering mechanisms as defined in Section 1.3 of the Elevator Safety Code.-
- (5) New Installation. Any new installation of elevators, dumbwaiters, escalators, or other lifts as defined in Section 1.3 Definitions of the Elevator Safety Code for which the plans and specifications and the application for the construction permit are filed as required by T.C.A. Section 68-121-108.
- (6) Other Terms. All other terms used in this Chapter shall have the meaning as defined by Section 1.3 of the Elevator Safety Code, and Section 1.4 of the Safety Code for Existing Elevators and Escalators.
- (7) The Elevator Safety Code. The Safety Code for Elevators and Escalators, ASME A17.1 - 2004, Seventeenth Edition, approved by the American National Standards Institute on January 14, 2004, effective as of October 31, 2004, with Addenda ASME A17.1a – 2005, approved by the American National Standards Institute on March 18, 2005, effective as of October 29, 2005, and the Supplement to ASME A17.1 - 2004, ASME A17.1S - 2005, approved by the American National Standards Institute on March 23, 2005, effective as of February 12, 2006, prepared and published by The American Society of Mechanical Engineers, except as modified in subparagraphs (a) through (s) shall be considered a part of this Chapter.
 - (a) The note in Requirement 2.11.1.3 Telephone as Alternative to Emergency Doors shall read as follows: Examples are pulp mills, grain elevators and dams;
 - (b) Section 4.3 Hand Elevators is deleted in its entirety;
 - (c) Section 5.2 Limited-Use/Limited-Application Elevators is deleted in its entirety;
 - (d) Section 5.3 Private Residence Elevators is deleted in its entirety;
 - (e) Section 5.4 Private Residence Inclined Elevators is deleted in its entirety;
 - (f) Section 5.8 Shipboard Elevators is deleted in its entirety;
 - (g) Section 5.9 Mine Elevators is deleted in its entirety;
 - (h) Section 7.4 Material Lifts Without Automatic Transfer Devices is deleted in its entirety;
 - (i) Section 7.5 Electric Material Lifts Without Automatic Transfer Devices is deleted in its entirety;
 - (j) Section 7.6 Hydraulic Material Lifts Without Automatic Transfer Devices is deleted in its entirety;

PROPOSED RULES

- (k) Section 7.9 Electric Material Lifts With Automatic Transfer Devices is deleted in its entirety;
 - (l) Section 7.10 Hydraulic Material Lifts With Automatic Transfer Devices is deleted in its entirety;
 - (m) Section 7.11 Material Lifts With Obscured Transfer Devices is deleted in its entirety;
 - (n) Requirement 8.6.7.2 Limited-Use/Limited-Application Elevators is deleted in its entirety;
 - (o) Requirement 8.6.7.3 Private Residence Elevators is deleted in its entirety;
 - (p) Requirement 8.6.7.4 Private Residence Inclined Elevators is deleted in its entirety;
 - (q) Requirement 8.6.7.8 Shipboard Elevators is deleted in its entirety;
 - (r) Requirement 8.6.7.9 Mine Elevators is deleted in its entirety; and
 - (s) Nonmandatory Appendix H Private Residence Elevator Guarding (5.3.1.6.2) is deleted in its entirety.
- (8) The Safety Code for Existing Elevators and Escalators. ASME A17.3 - 1996, Fourth Edition, approved by the American National Standards Institute on October 3, 1996, effective as of August 21, 1997, prepared and published by The American Society of Mechanical Engineers shall be considered a part of this Chapter.

Authority: T.C. A. §§68-121-101, 68-121-102, 68-121-103, and 68-121-108.

Subparagraph (c) of paragraph (3) of Rule 0800-3-4-.03 Design, Installation and Alterations is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (c) Other combinations of elevator replacement and repair of existing installations shall be considered a minor alteration, and shall at all times comply with Part 8 General Requirements of the Elevator Safety Code. If the contractor or owner determines that an inspection of a minor alteration pursuant to Rule 0800-3-4-.04 of this Chapter is appropriate, the contractor or owner shall direct such request for inspection to the local state elevator inspector, and pay the applicable fee as provided for in Rule 0800-3-10-.01.

Authority: T.C.A. §§68-121-103, 68-121-106, and 68-121-110.

Paragraph (4) of Rule 0800-3-4-.03 Design, Installation and Alterations is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (4) Repairs and Replacements. Repairs and replacements of damaged, broken, or worn parts shall conform to Requirement 8.6 Maintenance, Repair, and Replacement of the Elevator Safety Code.

Authority: T.C.A. §§68-121-103 and 68-121-106.

PROPOSED RULES

Subparagraphs (a) and (b) of paragraph (1) of Rule 0800-3-4-.04 Inspection and Tests are amended by deleting that language entirely and substituting the following language, so that as amended the rules shall read:

- (a) Acceptance Tests. The person or firm installing, relocating or altering elevators, dumbwaiters, escalators or other lifts shall notify the Department in writing at least seven (7) days before completion of the work and shall subject the new, moved, or altered portions of the equipment to the tests specified in Section 8.10 Acceptance Inspections and Tests of the Elevator Safety Code—insofar as the equipment mentioned therein is required or provided, to show that such equipment conforms to the requirements specified.
- (b) Acceptance Inspection. All new, altered and relocated elevators, dumbwaiters, escalators and other lifts shall be inspected for compliance with the requirements of this Chapter. Such inspections shall conform to the requirements in Section 8.10 Acceptance Inspections and Tests of the Elevator Safety Code to determine whether such equipment conforms to the requirements specified.

Authority: T.C.A. §§68-121-103 and 68-121-106.

Paragraph (2) of Rule 0800-3-4-.06 Qualifications and Licensing of Inspectors is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (2) Inspectors that are qualified and licensed as prescribed in T.C.A. §68-121-110 shall obtain certification in accordance with Requirement 8.10.1.1.3 of the Elevator Safety Code as soon as possible, but no later than twelve (12) months from the date of qualification and licensing under T.C.A. §68-121-110.

Authority: T.C.A. §§68-121-103 and 68-121-110.

Rule 0800-3-4-.09 Specifications for Tests and Inspections is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

0800-3-4-.09 SPECIFICATIONS FOR TESTS AND INSPECTIONS.

- (1) The guide for making the inspections and tests shall be the Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME A17.2 – 2004, Second Edition, approved by the American National Standards Institute on July 22, 2004, effective as of March 31, 2005, prepared and published by The American Society of Mechanical Engineers.

Authority: T.C.A. §§68-121-103 and 68-121-106.

PROPOSED RULES

CHAPTER 0800-3-6 SPECIAL PURPOSE PERSONNEL ELEVATORS

Rule 0800-3-6-.01 Safety Standards is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

0800-3-6-.01 SAFETY STANDARDS.

- (1) All new special purpose personnel elevators shall comply with the Safety Code for Elevators and Escalators, ASME A17.1 - 2004, Seventeenth Edition, approved by the American National Standards Institute on January 14, 2004, effective as of October 31, 2004, with Addenda ASME A17.1a – 2005, approved by the American National Standards Institute on March 18, 2005, effective as of October 29, 2005, and the Supplement to ASME A17.1 - 2004, ASME A17.1S - 2005, approved by the American National Standards Institute on March 23, 2005, effective as of February 12, 2006, prepared and published by The American Society of Mechanical Engineers.

Authority: T.C.A. §§68-121-103 and 68-121-109.

CHAPTER 0800-3-9 OPERATION UNDER EMERGENCY CONDITIONS

Rule 0800-3-9-.01 Safety Standards is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

0800-3-9-.01 SAFETY STANDARDS.

- (1) All elevators installed after the effective date of this regulation shall comply with the safety standards for the operation of elevators under fire or other emergency conditions prescribed in the Safety Code for Elevators and Escalators, ASME A17.1 - 2004, Seventeenth Edition, approved by the American National Standards Institute on January 14, 2004, effective as of October 31, 2004, with Addenda ASME A17.1a – 2005, approved by the American National Standards Institute on March 18, 2005, effective as of October 29, 2005, and the Supplement to ASME A17.1 - 2004, ASME A17.1S - 2005, approved by the American National Standards Institute on March 23, 2005, effective as of February 12, 2006, prepared and published by The American Society of Mechanical Engineers.

Authority: T.C.A. §§68-121-103 and 68-121-109

PROPOSED RULES

**CHAPTER 0800-3-10
FEES**

Subparagraph (a) of paragraph (4) of Rule 0800-3-10-.01 Fees is amended by deleting that language entirely and substituting the following language, so that as amended the rule shall read:

- (a) All passenger and freight elevators with two (2) or more landings..... \$50.00

Authority: T.C.A. §68-121-103(a)(5).

Chapter 0800-3-14 Rules of Procedure for Hearing Contested Cases Before the Elevator Safety Board is amended by deleting that language entirely and substituting the following language, so that as amended the chapter and rule shall read:

**CHAPTER 0800-3-14
RULES OF PROCEDURE FOR HEARING APPEALS
BEFORE THE ELEVATOR SAFETY BOARD**

0800-3-14-.01 APPEALS.

- (1) For the rules of procedure for hearing appeals before the Board, see the Rules of the Tennessee Department of State, Chapter 1360-4-1.

Authority: T.C.A. §§68-121-103 and 68-121-112.

The proposed rules set out herein were properly filed in the Department of State on the 17th day of July, 2006, 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 28 day of November, 2006. (07-12)

PROPOSED RULES

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

**CHAPTER 1360-6-1
CERTIFICATION OF MUNICIPAL CLERKS & RECORDERS**

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

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

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1360-6-1-.02, Certification Qualifications is amended by deleting the existing rule in its entirety and by substituting the following language so that as amended the rule shall read:

1360-6-1-.02 CERTIFICATION QUALIFICATIONS.

- (1) A person is eligible to obtain certification from the Secretary of State by obtaining certification from the International Institute of Municipal Clerks, or by completing a minimum of one hundred (100) credit hours from any of the following or combination thereof:
 - (a) The Municipal Clerks Institute conducted by the University of Tennessee; or
 - (b) Seminars conducted by the Tennessee Municipal League; or
 - (c) Leadership and Technical Programs conducted by the University of Tennessee Municipal Training; or
 - (d) Job-related seminars (Documentation should be submitted outlining the content of the seminars); or
 - (e) An Associate of Arts or Science Degree (maximum credit of 25 hours) or a Bachelor of Arts or Science Degree (maximum credit of 50 hours), provided that credit will be given for only one degree.

Authority: T.C.A. §§ 4-5-202, 6-54-120.

PROPOSED RULES

Rule 1360-6-1-.05, Continuing Education Course Requirements is amended by deleting the existing rule in its entirety and by substituting the following language so that as amended the rule shall read:

1360-6-1-.05 CONTINUING EDUCATION COURSE REQUIREMENTS.

- (1) Continuing education requirements may be met by attending a minimum of eighteen (18) credit hours from any of the following or combination thereof:
 - (a) The Academy for Advanced Education conducted by the University of Tennessee.
 - (b) The International Institute of Municipal Clerks annual conference or state, provincial or regional clerks meetings.
 - (c) Seminars conducted by the Tennessee Municipal League, unless the seminars are used to complete the required hours of education for certification.
 - (d) Leadership and Technical Programs conducted by the University of Tennessee Municipal Training, unless such programs are used to complete the required hours of education for certification.
 - (e) Job-related seminars, unless the seminars are used to complete the required hours of education for certification. Documentation should be submitted outlining the content of the seminar.

Authority: T.C.A. §§ 4-5-202, 6-54-120.

The proposed rules set out herein were properly filed in the Department of State on the 18th day of July, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of November, 2006. (07-16)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

For text of public necessity rules see T.A.R. cited at

<http://www.state.tn.us/sos/pub/tar/index.htm>

or

the Department of State's website at

http://www.state.tn.us/sos/rules/necessity/nec_index.htm

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding process for review and certification, chapter 1200-13-13, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 3, 2006; effective through August 15, 2006. (03-01)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding Severely and/or Persistently Mentally Ill persons, chapter 1200-13-13, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 13, 2006; effective through August 25, 2006. (03-08)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding Severely and/or Persistently Mentally Ill persons, chapter 1200-13-14, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 13, 2006; effective through August 25, 2006. (03-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules necessary to conform the Bureau of TennCare's rules to comply with state and federal statutory requirements and to comport with the requirements of *John B. v. Menke*, chapter 1200-13-13, TennCare Medicaid, 5 T.A.R. (May 2006) - Filed May 3, 2006; effective through October 15, 2006. (05-01)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders, chapter 1200-13-13, TennCare Medicaid, 5 T.A.R. (May 2006) - Filed May 17, 2006; effective through October 29, 2006. (05-11)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules necessary to conform the Bureau of TennCare's rules to comply with state and federal statutory requirements and to comport with the requirements of *John B. v. Menke*, 5 T.A.R. (May 2006) - Filed May 3, 2006; effective through October 15, 2006. (05-02)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders, chapter 1200-13-14, TennCare Medicaid, 5 T.A.R. (May 2006) - Filed May 17, 2006; effective through October 29, 2006. (05-12)

PUBLIC NECESSITY RULES

- 1200 - Department of Health - Community Services Division - Public Necessity Rules required by federal law and state law regarding changes required to be made to the Department's rules pertaining to Conrad J-1 Visa Waiver physicians, chapter 1200-20-11, Rules and Regulations Governing the State Conrad J-i Visa Waiver Program, 5 T.A.R. (May 2006) - Filed May 19, 2006; effective through October 31, 2006. (05-15)

- 0780 - Department of Commerce and Insurance - Division of Regulatory Boards - Public Necessity Rules promulgated in accordance with the "Tennessee Home Inspector License Act of 2005", chapter 0780-5-12 Home Inspectors, 5 T.A.R. (May 15, 2006) - Filed April 7, 2006, 2006; effective through September 19, 2006. (04-05)

PUBLIC NECESSITY RULES

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

**CHAPTER 1240-1-50
FINANCIAL ELIGIBILITY REQUIREMENTS
FAMILIES FIRST PROGRAM**

STANDARD OF NEED/INCOME

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the standard of need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. TCA Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the standard of need, in the annual Appropriations Act or in rule of the Department. Additionally, because the amount of funding available for grants and the new standard of need is not known until the passage of the annual Appropriations Act [Section 10, Item 19, Senate Bill 3914/House Bill 4025 (2006)] which did not occur until May 26th of 2006, and because the law requires that the standard of need and grant amounts be set by rule to be effective on July 1 of the fiscal year, it is not possible to establish rules by regular rulemaking procedures.

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

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

PUBLIC NECESSITY RULES

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

**CHAPTER 1240-1-50
FINANCIAL ELIGIBILITY REQUIREMENTS
FAMILIES FIRST PROGRAM**

AMENDMENTS

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

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

- (1) Families First Cash Assistance Standards
 - (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
 - (b) Gross Income Standard (GIS). This standard is set at One Hundred Eighty-Five Percent (185%) of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the Assistance Group (AG) is not eligible for Families First.
 - (c) Standard Payment Amount (SPA). Tennessee does not meet One Hundred Percent (100%) of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on available State and Federal funds is paid, except in the instances specified in 1240-1-50-.20(e).
 - (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.
 - (e) Family Benefit Cap

PUBLIC NECESSITY RULES

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

PUBLIC NECESSITY RULES

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

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

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

(g) Families First Need/Payment Standards

1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1197	1515	1782	2002	2185	2337	2466	2575	2671	2758
Consolidated Need Standard	647	819	963	1082	1181	1263	1333	1392	1444	1491
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

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

PUBLIC NECESSITY RULES

TABLE I, cont.

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2836	2910	2980	3047	3112	3169	3221	3263	3291	3302
Consolidated Need Standard	1533	1573	1611	1647	1682	1713	1741	1764	1779	1785
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

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

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1197	1515	1782	2002	2185	2337	2466	2575	2671	2758
Consolidated Need Standard	647	819	963	1082	1181	1263	1333	1392	1444	1491
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

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

PUBLIC NECESSITY RULES

TABLE II, cont.

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2836	2910	2980	3047	3112	3169	3221	3263	3291	3302
Consolidated Need Standard	1533	1573	1611	1647	1682	1713	1741	1764	1779	1785
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

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

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 19.1% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 24.1% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2005-2006.
3. Standard for Families First Transitional Services
 - (i) Families First assistance groups and other low income families may receive transitional services after the Families First case closes.
 - (ii) For purposes of this Part, “transitional services” is defined as services to assist the customer in attaining long-term self-sufficiency.
 - (iii) Transitional services will be provided subject to the continued availability of state and/or federal funding.
 - (iv) In order to receive these services, the assistance group’s gross monthly income must meet a standard of need.
 - (v) The standard of need for transitional services under this Part is defined as Two Hundred Percent (200%) of the Federal poverty level for the assistance group family size. The standard of need for this Part does not apply to Transitional Child Care or Transitional Medicaid.

PUBLIC NECESSITY RULES

Authority: TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)-(g); Senate Bill 3914/House Bill 4025 (2006); 42 USCA §§ 601 et seq.; 45 CFR 233.20; and 42 USCA § 1315.

The public necessity rules set out herein were properly filed in the Department of State on the 3rd day of July, 2006 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 15th day of December, 2006. (07-01)

RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 INSURANCE DIVISION

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. 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 Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CST on the 26th day of September, 2006.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division 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, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Dakasha K. Winton, Staff Attorney, Office of Legal Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-56 EDUCATIONAL REQUIREMENTS

AMENDMENTS

Rule 0780-1-56-.02, Basic Requirements, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Continuing Education – Every individual seeking biennial renewal of a license pursuant to Tenn. Code Ann. § 56-6-107(c), unless otherwise exempt pursuant to such Section, must satisfactorily complete twenty-four (24) credit hours of study in approved courses, programs of instruction or seminars every two (2) years following the date of issuance of the original license. Certificates of completion for courses previously submitted and approved for credit may only be repeated and submitted for credit after three (3) years.

Authority: *T.C.A. §§ 56-6-107(c), 56-6-124, 56-32-214, 56-35-122 and 56-35-201.*

RULEMAKING HEARINGS

Rule 0780-1-56-.04(1), Control and Reporting Systems, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Each insurance producer shall biennially submit on a form prescribed by the Commissioner, a signed statement setting forth the continuing education program(s) in which the insurance producer has participated during the reporting period. Such insurance producer shall retain documentation supporting such statement for the most recent two (2) year period subsequent to the date of submission.

Authority: *T.C.A. §§ 56-6-107(c), 56-6-124, 56-32-214, 56-35-122 and 56-35-201.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2006. (07-34)

RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 INSURANCE DIVISION

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. 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 Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CST on the 20th day of September, 2006.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division 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, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Tony Greer, Staff Attorney, Office of Legal Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-78 TENNESSEE COUNTY MUTUAL INSURANCE COMPANY ACT RULE

NEW RULES

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0780-1-78-.01	Purpose and Scope
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0780-1-78-.03	Compensation Expense Ratio
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0780-1-78-.05	Dividends

0780-1-78-.01 PURPOSE AND SCOPE.

The following rules developed by the Department of Commerce and Insurance concern the implementation of the Tennessee County Mutual Insurance Company Act of 2006 ("Act"). The purpose of these rules is to set forth those requirements and standards that the Commissioner will utilize in the regulation of County Mutual Insurance Companies.

Authority: *Public Chapter 689, Section 23.*

0780-1-78-.02 DEFINITIONS.

- (1) "Commissioner" means the Commissioner of the Department of Commerce and Insurance;

RULEMAKING HEARINGS

- (2) "Compensation expense ratio" means the ratio of the total compensation (including, but not limited to, salaries, commissions, insurance benefits and retirement account contributions, as well as all local, state and federal taxes associated with such compensation) paid to all officers, directors and employees of a County Mutual Insurance Company to the total gross premium of the County Mutual Insurance Company;
- (3) "County Mutual Insurance Company" means a person that is authorized to provide insurance coverage under Tenn. Code Ann. § 56-22-101, *et seq.*;
- (4) "Department" means the Tennessee Department of Commerce and Insurance;
- (5) "Gross premium" means maximum gross premiums as provided in the policy contracts, new and renewal, including policy or membership fees, whether paid in part or in whole by cash, automatic premium loans, dividends applied in any manner whatsoever, and without deduction or exclusion of dividends in any manner, but excluding premiums returned on cancelled policies, on account of reduction in rates, or reductions in the amount insured;
- (6) "NAIC" means the National Association of Insurance Commissioners;
- (7) "Policyholder" means a person who is insured by a County Mutual Insurance Company;
- (8) "Premium" means money given in consideration to a County Mutual Insurance Company on account of or in connection with an insurance policy for a specified policy period;
- (9) "Surplus" means the accumulated assets of a County Mutual Insurance Company that exceed the County Mutual Insurance Company's accrued losses and expenses.

Authority: *Public Chapter 689, Section 23.*

0780-1-78-.03 COMPENSATION EXPENSE RATIO.

- (1) No County Mutual Insurance Company's compensation expense ratio may exceed thirty percent (30%) for any given year.
- (2) Any County Mutual Insurance Company whose compensation expense ratio exceeds thirty percent (30%) for any given year shall be considered to be operating in a hazardous financial condition.

Authority: *Public Chapter 689, Sections 10(b), 22 and 23.*

0780-1-78-.04 ANNUAL STATEMENT REQUIREMENTS.

- (1) All County Mutual Insurance Companies shall prepare their Annual Statements, as well as any and all other financial information required by the Act, in accordance with the NAIC's Accounting Practices and Procedures Manual in effect for the period covered by the Annual Statement.

RULEMAKING HEARINGS

- (2) A County Mutual Insurance Company shall prepare its Annual Statement according to the NAIC's Quarterly and Annual Statement Instructions—Property/Casualty, utilizing those instructions that are applicable and pertinent to the completion of the Annual Statement blank prescribed by the Commissioner.
- (3) When a County Mutual Insurance Company has greater than one million dollars (\$1,000,000) in gross premium in a given year, it shall be required, in addition to the filing of the Annual Statement as required by subsection (1) of this Rule, to file financial reports audited by a certified public accountant licensed as such by the State of Tennessee on or before June 1 for the year ended December 31 immediately preceding.
- (4) When a County Mutual Insurance Company has greater than one million dollars (\$1,000,000) in gross premium in a given year, it shall be required, in addition to other requirements contained in this Rule, to file an opinion of an appointed actuary in accordance with the NAIC's Quarterly and Annual Statement Instructions—Property/Casualty.

Authority: *Public Chapter 689, Sections 12(a)(4) and 23.*

0780-1-78-.05 DIVIDENDS.

- (1) No County Mutual Insurance Company may pay a dividend to its policyholders in any year in which its surplus is less than that of the previous year without providing the Commissioner with such information as might be deemed necessary by the Commissioner to determine that such payment is reasonable. No payment may be made until the Commissioner informs the County Mutual Insurance Company in writing that such payment has been deemed reasonable by the Commissioner.
- (2) No County Mutual Insurance Company may pay a dividend to its policyholders which would cause the County Mutual Insurance Company to fall below one hundred twenty percent (120%) of the surplus level required to do business in its geographic area, as found in Sections 8(c) and 9(f)(1) of the Act, or which might otherwise cause it to fail to maintain a surplus of at least thirty three percent (33%) of the County Mutual Insurance Company's gross premium for the twelve (12) month period prior to the declaration of the dividend, as found in Section 9(f)(2).

Authority: *Public Chapter 689, Sections 12(b)(3) and 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2006. (07-35)

RULEMAKING HEARINGS

**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 Campbell County Courthouse, Commissioner's Workshop Area, Main Street, Jacksboro, TN 37757 on September 18, 2006 at 5:30 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
	Campbell County (07)
07-506	Carborundum/Electro Minerals Div. Caryville, 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 July, 2006. (07-36)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day September 2006.

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, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

Rule Chapter 1200-13-12 Bureau of TennCare is deleted in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of July, 2006. (07-28)

RULEMAKING HEARINGS

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, 63-6-207, 63-6-233, and Public Chapter 774 of the Public Acts of 2006. 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 Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CDT) on the 18th day of September, 2006.

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, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (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, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0880-2-.08 Examination, is amended by adding the following language as new subparagraph (4) (e):

(4) (e) Extensions

1. The seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule may be extended for applicants who are licensed in good standing and who have been engaged in continuous training and practice in another jurisdiction in which the applicants have been granted an extension or waiver from the seven (7) year limitation.
2. The amount of time an applicant has actively served while continuous training and practicing in the armed forces of the United States shall not be counted in calculating the seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule .
3. No extension may be granted that operates to authorize an applicant to take longer than ten (10) years to complete all three steps of the USMLE.
4. The provisions of this subparagraph (e) shall expire and no longer be valid on May 24, 2009.

Authority T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-207, and Public Chapter 774 of the Public Acts of 2006.

RULEMAKING HEARINGS

Rule 0880-2-.19 Continuing Medical Education, is amended by inserting the following language as new subparagraph (1) (b), and renumbering the current subparagraphs (1) (b), (1) (c) and (1) (d) as subparagraphs (1) (c), (1) (d) and (1) (e):

- (1) (b) At least one (1) of the forty (40) required hours shall be a course designed specifically to address prescribing practices.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-233.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of July, 2006. 907-21)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680 ENVIRONMENTAL DIVISION

The Tennessee Department of Transportation will hold a public hearing to receive comments concerning the promulgation of amendments to Chapter 1680-2-3, Control of Outdoor Advertising, with respect to the control of non-conforming and grandfathered non-conforming advertising devices along the Interstate and primary system of highways. 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 at 1:30 p.m. CDT on Thursday, September 21, 2006. (Take Interstate 40 to Exit 204 and take Briley Parkway northbound to Exit 26B, Centennial Boulevard West.)

Written comments will be considered if received by the close of business (4:30 p.m.) on September 21, 2006, in the Office of General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243, or if received at the public rulemaking hearing on September 21, 2006.

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 (September 21, 2006) 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, or by telephone at (615) 741-4984.

For a copy of this notice of rulemaking hearing, contact: John Reinbold, 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

CHAPTER 1680-2-3 CONTROL OF OUTDOOR ADVERTISING

AMENDMENTS

Rule 1680-2-3-.02, Definitions, is amended by deleting paragraph (10), Extraordinary Maintenance, in its entirety and renumbering all subsequent paragraphs in the rule.

Authority: T.C.A. § 54-21-112.

Subparagraph (1)(b) of Rule 1680-2-3-.04, Control of Non-Conforming and Grandfathered Non-Conforming Advertising Devices Along the Interstate and Primary System of Highways, is amended by deleting the subparagraph in its entirety.

Authority: T.C.A. § 54-21-112.

RULEMAKING HEARINGS

Paragraph (2) of Rule 1680-2-3-.04, Control of Non-Conforming and Grandfathered Non-Conforming Advertising Devices Along the Interstate and Primary System of Highways, is amended by deleting the current wording of the paragraph in its entirety and substituting the following language in its place:

- (2) A lawfully permitted non-conforming device or grandfathered non-conforming device that has been destroyed or damaged beyond what may be repaired through customary maintenance may be rebuilt or repaired and continue to be permitted only if all of the following conditions are satisfied:
- (a) The destruction of or damage to the device must have been caused by vandalism or some other criminal or tortious acts, excluding any negligent or intentional acts of the permit holder or any party acting by permission of, with the knowledge of, or in concert with the permit holder and/or sign owner.
 - (b) No device may be rebuilt and/or repaired without the prior written approval of the Regional Highway Beautification Office for the administrative region of the Tennessee Department of Transportation in which the device is located.
 - (c) The current holder of the permit or sign owner, if different, must submit a written request for approval to the appropriate Regional Highway Beautification Office, which written request must provide, at a minimum:
 - 1. Proof of the date and cause of the destruction of and/or damage to the device, including a copy of the police report made with respect to the vandalism or other criminal or tortious act causing such destruction or damage; and
 - 2. A general description of the manner in which it is proposed to rebuild and/or repair the device.
 - (d) No post, pole or other support structure, or any component of the device other than the sign face or stringers, will be approved for replacement or repair without proof that such post, pole, support structure, or other component of the device was destroyed or damaged by an act of vandalism or some other criminal or tortious act.
 - (e) The device must be rebuilt and/or repaired in such manner that it replicates the original device, including specifically as follows:
 - 1. The rebuilt and/or repaired device must remain or be rebuilt in the exact same location as the original device; and
 - 2. The rebuilt and/or repaired device must have the same height, size, and dimensions as the original device; and
 - 3. Each post, pole, other support structure, or other component of the device, including the sign face and stringers, must be rebuilt and/or repaired with materials that replicate the materials used to construct that same component in the original device (e.g., wood for wood, steel for steel, etc.); and
 - 4. No component may be added to the original device, including no lighting if the original sign was not illuminated, no reflective material if the original sign was not reflectorized, and no changeable message technology on the sign face if not included on the original sign.

RULEMAKING HEARINGS

- (f) The rebuilding and/or repair of the device must be completed within twelve (12) months after the date on which the original device was destroyed and/or damaged or the device will be treated as an abandoned outdoor advertising device.

Authority: T.C.A. § 54-21-112.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2006. (07-32)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 06-17 AMENDING PROCLAMATION 06-10 REGULATING SPRING WILD TURKEY HUNTING SEASONS AND BAG LIMITS

Pursuant to the authority granted by Tennessee Codes Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby amends Proclamation 06-10 by inserting the following language in Section III.C.:

Old Hickory Lock 5 Refuge (South of the Cumberland River) (Young Sportsmen Only) (access by boat only)	March 31- April 1, April 7-8, 14-15, 21-22.
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Proclamation No. 06-17 received and recorded this 12th day of July, 2006. (07-08)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION PROCLAMATION - 1660

AMENDING PROCLAMATION 06-14

**WILDLIFE MANAGEMENT AREAS
HUNTING SEASONS, LIMITS AND MISCELLANEOUS REGULATIONS**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby amends Proclamation 06-14 by inserting the following language in Section II. B. Old Hickory Lock 5 Refuge:

Old Hickory Lock 5 Refuge (South of the Cumberland River)

Deer, Turkey(Archery) (Young Sportsman Only	Sept 23-24, Sept 30-Oct 1, Oct 7-8, 14-15. Bag limit same as statewide. Deer count toward statewide bag.
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Special Regulations	Boat access only.
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Proclamation No. 06-18 received and recorded this 12 day of July, 2006. (07-07)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION PROCLAMATION - 1660

**PROCLAMATION 06-19
AMENDING PROCLAMATION 06-13
STATEWIDE BIG GAME HUNTING SEASONS AND BAG LIMIT
(EXCLUSIVE OF WILDLIFE MANAGEMENT AREAS AND REFUGES)**

Pursuant to the authority granted by Tennessee Code Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby amends Proclamation 06-13 as follows:

Section I. B. White-tailed Deer Bag Limits and Season Dates, is amended by inserting a footnote under the Bag Limit Tables to read:

Archery equipment is permitted during the Muzzleloader and Gun seasons while muzzleloading equipment is permitted during the Gun season.

Section III. Bear, is amended to include Blount, Cocke (South of I-40), and Sevier in the November 25-26, 2006, Gun-Muzzleloader-Archery (No Dogs) season. A Special Bear Hunting Regulation (# 4) was also added so that as amended Section III will read as follows:

Section III. Bear.

The Following Counties Are Open For Bear Hunting:

Carter, Cocke (North of I-40), Greene, Johnson, Monroe, Polk (that portion east of Hwy. 411 and north of Hwy. 64), Sullivan (that portion east of I-81), Unicoi, and Washington

Gun-Muzzleloader-Archery (Dogs Permitted)	Nov. 13-14, 2006 1 per year-Either Sex
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Gun-Muzzleloader-Archery (Dogs Permitted)	Nov. 30- Dec. 13, 2006 1 per year-Either Sex.
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Blount, Carter, Cocke, Greene, Johnson, Monroe, Polk (that portion east of Hwy. 411 and north of Hwy. 64), Sevier, Sullivan (that portion east of I-81), Unicoi, and Washington

Gun-Muzzleloader-Archery (No Dogs)	Nov. 25-Nov. 26, 2006 1 per year-Either Sex
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Blount, Cocke (South of I-40), and Sevier

Gun-Muzzleloader-Archery (Dogs Permitted)	Sept. 25-Oct 1, 2006 1 per year-Either Sex.
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Gun-Muzzleloader-Archery (Dogs Permitted)	Nov. 13-16, 2006 1 per year-Either Sex
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Gun-Muzzleloader-Archery (Dogs Permitted)	Nov. 30-Dec. 8, 2006 1 per year-Either Sex
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WILDLIFE PROCLAMATIONS

Blount and Sevier

Archery Only
(No Dogs)

Oct. 7-15, 2006
1 per year-Either Sex.

The Following Counties Are Open For A Bear Dog Training Season:

Cocke, Greene, and Sevier Counties.

Sept. 5-18, 2006. No bears may be taken. No weapons may be possessed.
Daylight hours only.

The Following Counties Are Open For A Bear Dog Training Season (Private lands only):

Blount, Carter, Johnson, Sullivan (that portion east of I-81), Unicoi, and Washington

Sept. 5-18, 2006. No bears may be taken. No weapons may be possessed. Daylight
hours only.

Special Bear Hunting Regulations:

1. The limit of bears for any person participating in the statewide or managed hunts or both shall not exceed one (1) bear per calendar year.
2. Cubs or female bears with cubs at side may not be taken at any time. A cub is defined as any bear weighing seventy-five (75) pounds or less.
3. All harvested bears must be checked out at an official checking station. Bears may be whole or field dressed, but must weigh 75 pounds or greater when checked in.
4. The reproductive sex organs shall remain attached to each bear harvested at least until the bear has been officially checked out at an official TWRA checking station.

Proclamation No. 06-19 received and recorded this 24 day of July, 2006. (07-17)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning July 3, 2006 and ending July 31, 2006.

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

RILEY C. DARNELL
Secretary of State