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TENNESSEE ADMINISTRATIVE REGISTER



November 15, 2005
Volume 31, Number 11

RILEY C. DARNELL
Secretary of State

Division of Publications
8th Floor, Snodgrass-Tennessee Tower
312 8th Avenue North
Nashville TN 37243 - 0310

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PREFACE

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

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

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

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

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

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

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

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

Reproduction - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

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ANNOUNCEMENTS

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400

PETITION FOR DECLARATORY ORDER NOTICE OF HEARING

(As required Under T.C.A. §4-5-224)

1. Petitioner's Name: Tenn. Public Employees for Environmental Responsibility
Bordeaux Beautiful

2. Petitioner's Representative: Tenn. PEER
Barry Sulkin

Bordeaux Beautiful
Chris Utley

Address: Tenn. PEER
4443 Pecan Valley Road
Nashville, TN 37218

Bordeaux Beautiful
511 Emerald Court
Nashville, TN 37218

Telephone Number: Tenn. PEER
615-313-7066

Bordeaux Beautiful
615-256-7024

3. Background:

Waste Management, Inc. of Tennessee (WMI) owns and operates the Southern Services Landfill in Nashville, Tennessee. On January 27, 2004 the Tennessee Department of Environment and Conservation (TDEC) issued to WMI an Aquatic Resource Alteration Permit (ARAP) and Certification per Section 401 of the Clean Water Act authorizing the filling of 1.25 acres of wetlands created for mitigation of previous impacts and the filling of approximately 2,242 feet of stream. The petitioners filed a request for Declaratory Order with the Water Quality Control Board (Board) challenging the validity of the permit. On October 25, 2005 the Board decided to conduct a contested case hearing on the issue in accordance with T.C.A. § 4-5-225.

4. Summary of the relief requested:

The Petitioners have requested a ruling from the Board declaring that the Southern Services ARAP/401 permit is invalid due to lack of public notice and conflict with previous permitting/certifications for the same

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site. Petitioners further request that the Board direct TDEC to cease any further attempts to grant or modify any ARAP or 401 Certification pertaining to the landfill until entry of the aforementioned ruling. Finally, Petitioners request that the Board stay the effect of any and all permits and/or certifications related to this matter pending the Board's final decision on the validity of the January 27, 2004 permit.

If you are interested in intervening or participating in this case in any way or think that you may be affected by the possible outcome of this case, you must file a Petition to Intervene, stating your specific interest(s) in the case and your legal position/argument regarding those interests.

Administrative Procedures Docket Number:

Your petition must be filed with:

Tennessee Secretary of State
Administrative Procedures Division
312 8th Avenue, North
8th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243

Copies must also go to:

Patrick N. Parker
Tennessee Dept. of Environment & Conservation
Office of General Counsel
312 8th Avenue, North
25th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243-1548

Filed in the Department of State on October 28, 2005. (10-40)

ANNOUNCEMENTS

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 10.82%.

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

Kevin P. Lavender

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of November 2005 is 8.94 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 4.94 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Kevin P. Lavender

ANNOUNCEMENTS

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.

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-01	Oct 3 2005	1730 Veterinary Medical Examiners	Rulemaking Hearing Rules	Amendment	Chapter 1730-1 General Rules Governing Veterinarians 1730-1-.02 Scope of Practice	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 13, 2005
10-02	Oct 3 2005	1640 Student Assistance Corpora- tion	Public Necessity Riues	New RULES	<i>Chapter 1640-1-19</i> <i>Tennessee Educational Lottery Scholarship</i> <i>Program</i> 1640-1-19-.01 Definitions 1640-1-19-.02 Scholarship Award Amounts and Classifications 1640-1-19-.03 Application Process 1640-1-19-.04 General Eligibility 1640-1-19-.05 Eligibility – Tennessee Hope Scholarship 1640-1-19-.06 Eligibility – Tennessee ASPIRE Award 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship 1640-1-19-.08 Eligibility – Tennessee Hope Access Grant 1640-1-19-.09 Eligibility – Tennessee HOPE Foster Child Tuition Grant 1640-1-19-.10 Eligibility – Wilder-Naifeh Technical Skills Grant 1640-1-19-.11 Eligibility – Tennessee Dual Enrollment Grant 1640-1-19-.12 Retention of Awards – General Requirements 1640-1-19-.13 Retention of Awards – Tennessee Hope Access Grant 1640-1-19-.14 Retention of Awards – Tennessee Dual Enrollment Grant 1640-1-19-.15 Tennessee Education Lottery Scholarship Award Process 1640-1-19-.16 Continuation of Tennessee Education Lottery Scholarship Award 1640-1-19-.17 Award Made in Error 1640-1-19-.18 Refund Policy 1640-1-19-.21 Military Mobilization of Eligible Students 1640-1-19-.23 Transfer Students 1640-1-19-.24 Transient Students	Will Burns THEC Site 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243 615-741-7571	Oct 3, 2005 through Mar 18, 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
10-02 cont.					1640-1-19-.25 Denial of Initial Eligibility – Failure to Timely Enroll 1640-1-19-.26 Appeal and Exception Process		
10-04	Oct 6 2005	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendment	<i>Chapter 1050-2 General Rules and Regulations Governing the Practice of Osteopathy</i> 1050-2-.13 Specially Regulated Areas and Aspects of Medical Practice 1050-2-.20 Free Health Clinic and Volunteer Practice Requirements	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Dec 20, 2005
10-08	Oct 7 2005	1360 State Charitable Solicitation Charitable Gaming Section	Proposed Rules	New Rules	<i>Chapter 1360-3-3 Procedures for Operating Charitable Gaming Events</i> 1360-3-3-.01 Definitions 1360-3-3-.02 Application Sliding Fee Scale 1360-3-3-.03 Applications for Authorization to hold an Annual Gaming Event- Time to submit applications 1360-3-3-.04 Proof of Active and Continuous Existence 1360-3-3-.05 Proof of §501(c)(3) Tax Exempt Status and Purpose(s) 1360-3-3-.06 Description of the Game 1360-3-3-.07 Prohibited/ Allowed Types of Games 1360-3-3-.08 Action by Board of Directors 1360-3-3-.09 Amendment Process- Conflicting Locations Other Amendments 1360-3-3-.10 Conduct of the Game 1360-3-3-.11 Criminal Background Checks 1360-3-3-.12 Accounting Procedures 1360-3-3-.13 Proof that Net Event Proceeds Were Used for Charitable Purpose 1360-3-3-.14 Disqualifications/Civil Penalties 1360-3-3-.15 Co-operation with other State Agencies	Judy Bond-McKissack Charitable Solicitation 312 8th Ave N 8th Fl TN Twr Nashville TN 37243 615-741-2555	Feb 28, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-09	Oct 10 2005	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0260-2</i> <i>General Rules Governing Chiropractic Examiners</i> 0260-2-.19 Board Members Officers Consultants Records and Declaratory Orders <i>Chapter 0260-3</i> <i>General Rules Governing Chiropractic X-Ray Technologists</i> 0260-3-.06 Fees 0260-3-.12 Continuing Education <i>Chapter 0260-5</i> <i>General Rules Governing Chiropractic Therapy Assistants</i> 0260-5-.06 Fees 0260-5-.12 Continuing Education New Rule 0260-2-.25 Free Health Clinic and Volunteer Practice Requirements	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 24, 2005
10-10	Oct 11 2005	1150 Occupational and Physical Therapy Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 1150-2</i> <i>General Rules Governing the Practice of Occupational Therapy</i> 1150-2-.01 Definitions 1150-2-.03 Necessity of Certification 1150-2-.04 Qualifications for Certification 1150-2-.05 Procedures for Certification 1150-2-.06 Fees 1150-2-.07 Application Review Approval and Denial 1150-2-.08 Examinations 1150-2-.09 Renewal of Certificate 1150-2-.11 Retirement and Reactivation of Certificate 1150-2-.15 Disciplinary Actions Civil Penalties and Screening Panels 1150-2-.16 Duplicate Certificate 1150-2-.17 Change of Name and/or Address 1150-2-.18 Mandatory Release of Client Records 1150-2-.19 Committee Meetings Officers Consultants Records and Declaratory Orders	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 25, 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
10-11	Oct 11, 2005	0780 Commerce and Insurance Emergency Communications Board	Rulemaking Hearing Rules	New Rules	0780-6-2-.01 Purpose 0780-6-2-.02 Definitions 0780-6-2-.03 Minimum Training Requirements 0780-6-2-.04 Minimum Course of Study Requirements 0780-6-2-.05 Minimum Supervised On-the-Job Training Requirements 0780-6-2-.06 Waiver	Lynn Questell TN Emergency Communications Board 500 J Robertson Pkwy Nashville TN 37243 (615) 741-2882	Dec 25, 2005
10-12	Oct 11, 2005	0800 Labor and Workforce Development Boiler and Elevator Inspection	Emergency Rules		<i>Chapter 0800-3-15 Fire Safety for Elevators</i> 0800-3-15-.01 General Standards for Emergency Keyed Lock Box	Sydne Ewell 2nd Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN 37243	Oct 11, 2005 through Mar 25, 2006
10-14	Oct 12, 2005	0800 Labor and Workforce Development Boiler and Elevator Inspection	Proposed Rule	New Rule	<i>Chapter 0800-3-15 Fire Safety for Elevators</i> 0800-3-15-.01 General Standards for Emergency Keyed Lock Box		Feb 28, 2006
10-16	Oct 14, 2005	1240 Human Services Child Support Services Division	Emergency Rule	Amendments	<i>1240-2-4 Child Support Guidelines</i> 1240-2-4-.05 Modification of Child Support Orders	Kim Beals Human Services 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Oct 14, 2005 through Mar 28, 2006
10-22	Oct 18, 2005	0480 Dispensing Opticians	Rulemaking Hearing Rules	Amendments	<i>Chapter 0480-1 General Rules Governing Dispensing Opticians</i> 0480-1-.05 Procedures for Licensure 0480-1-.06 Fees 0480-1-.08 Examinations 0480-1-.09 Renewal of License 0480-1-.11 Retirement and Reactivation of License 0480-1-.12 Continuing Education 0480-1-.14 Apprenticeship Training Program 0480-1-.22 Guidelines for Contact Lenses	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Jan 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
10-24	Oct 20, 2005	0780 Commerce and Insurance Fire Prevention	Rulemaking Hearing Rules	Amendments	<i>Chapter 0780-2-3</i> <i>Review of Construction Plans and Specifications</i> 0780-2-3-.01 Definitions 0780-2-3-.02 Submission of Plans 0780-2-3-.02 Submission of Plans 0780-2-3-.04 Fees 0780-2-3-.05 Approval of Plans 0780-2-3-.08 Local Exclusions 0780-2-3-.09 Exemptions 0780-2-3-.10 Certificate of Occupancy	Robert E. Herndon Commerce and Insurance 500 J Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	Jan 2, 2006
10-25	Oct 20, 2005	0940 Finance and Administration Mental Retardation Services	Rulemaking Hearing Rules	New Rules	<i>Chapter 0940-4-3</i> <i>Methodology Utilized to Determine Payments to Service Providers (Rate Structure)</i> 0940-4-3-.01 Purpose 0940-4-3-.02 Scope 0940-4-3-.03 Definitions 0940-4-3-.04 Rate Setting Methodologies for Medical, Residential and Supported Living. 0940-4-3-.05 Special Needs Adjustments 0940-4-3-.06 Rate Setting Methodologies for Day Services. 0940-4-3-.07 Rate Setting Methodologies for Clinical Services. 0940-4-3-.08 Rate Setting Methodologies for Respite and Personal Assistance Services. 0940-4-3-.09 Rate Setting Methodologies for Dental Services. 0940-4-3-.10 Rate Setting Methodologies for Personal Emergency Response Systems. 0940-4-3-.11 Rate Setting Methodologies for Specialized Medical Equipment and Supplies. 0940-4-3-.12 Rate Setting Methodologies for Environmental Modifications. 0940-4-3-.13 Rate Setting Methodologies for Vehicle Modifications	Larry Latham 615-253-6302 Steven O. Tepley 532-6526 Mental Retardation Services Finance and Administration 15th Fl A Jackson Bldg 500 Deaderick St Nashville TN 37243	Jan 3, 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
10-27	Oct 25, 2005	1660 TWRA	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-8</i> <i>Rules and Regulations of Hunts</i> 1660-1-8-.03 Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands 1660-1-8-.05 Permit Applications and Drawings	Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	Jan 8, 2006
10-29	Oct 26, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-8-35</i> <i>Standards for Outpatient Diagnostic Centers</i> 1200-8-35-.01 Definitions 1200-8-35-.02 Licensing Procedures 1200-8-35-.03 Disciplinary Procedures 1200-8-35-.04 Administration 1200-8-35-.05 Admissions, Discharges, and Transfers 1200-8-35-.06 Basic Services 1200-8-35-.07 Reserved 1200-8-35-.08 Building Standards 1200-8-35-.09 Life Safety 1200-8-35-.10 Infectious and Hazardous Waste 1200-8-35-.11 Records and Reports 1200-8-35-.12 Patient Rights 1200-8-35-.13 Policies and Procedures for Health Care Decision-Making 1200-8-35-.14 Disaster Preparedness	Richard Russell Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Jan 9, 2006
10-31	Oct 27, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-14</i> <i>TennCare Standard</i> 1200-13-14-.10 Exclusion	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Jan 10, 2006
10-32	Oct 27, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-14</i> <i>TennCare Standard</i> 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Jan 10, 2006
10-33	Oct 27, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-13-14</i> <i>TennCare Standard</i> 1200-13-14-.08 Providers	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Jan 10, 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
10-34	Oct 27, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rule	Amendment	<i>Chapter 1200-13-13 TennCare Medicaid 1200-13-13-.10 Exclusion</i>	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Jan 10, 2006
10-35	Oct 27, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rule	Amendment	<i>Chapter 1200-13-13 TennCare Medicaid 1200-13-13-.08 Providers</i>	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Jan 10, 2006
10-36	Oct 27, 2005	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rule	Amendment	<i>Chapter 1200-13-13 TennCare Medicaid 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits</i>	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	Jan 10, 2006
10-37	Oct 28, 2005	0400 Environment And Conservation Division Of Underground Storage Tanks	Emergency Rules	Amendments	<i>Chapter 1200-1-15 Underground Storage Tank Program 1200-1-15-.02 UST Systems: Design, Construction, Installation and Notification</i>	Alan M. Leiserson OGC Environment and Conservation 20th Fl L&C Twr 401 Church Street Nashville TN 37243 615-532-0131	Oct 28, 2005 through April 11, 2006
10-39	Oct 14, 2005	1540 TN Higher Education Commission	Petition for Rulemaking Hearing		<i>Chapter 1540-1-1 Autorization and Regulation of Postsecondary Education Institutions and Thier Agents</i>	National College of Business and Technology	
10-41	Oct 31, 2005	1370 Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists	Rulemaking Hearing Rules	Amendment	1370-2-.12 Continuing Education	Ernest Sykes, Jr. OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611.	Jan 14, 2006
10-42	Oct 28, 2005	1340 Safety Tennessee Highway Patrol	Proposed Rules	New Rules	<i>Chapter 1340-7-1 Employee Criteria for Tennessee Highway Patrol 1340-7-1-.01 Purpose 1340-7-1-.02 Definitions 1340-7-1-.03 Employee Criteria</i>	Major Lee Chaffin THP 1150 Foster Ave. Nashville, TN 37249-1000 615-251-5175	Feb 28, 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.state.tn.us/hsda/> for the latest Notice of Beginning of Review Cycle.

ANNOUNCEMENTS

TN HIGHER EDUCATION COMMISSION - 1540

NOTICE OF PETITION FOR RULEMAKING HEARING

We, the undersigned citizens of Tennessee, will be affected by the proposed rules published by the Tennessee Higher Commission in the Tennessee Administrative Register, September 15, 2005, specifically Chapter 1540-1-2, Authorization and Regulation of Postsecondary education Institutions and Their Agents, and therefore request that a public rulemaking hearing be held pursuant to T.C.A. Section 4-5-202. Please notify us of the time and date of the hearing by mail at our stated addresses in accordance with T.C.A. 4-5-203.

The Secretary of State received this petition on October 14, 2005 and acknowledges that more than twenty-five (25) persons that are citizens of Tennessee and will be affected by the rule have signed the petition.
(10-39)

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

FOR TEXT OF EMERGENCY RULE SEE T.A.R. CITED

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules promulgated in response to the threat of Vesicular Stomatitis introduction into the State of Tennessee, Chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 8 T.A.R., Volume 31, Number 8, (August 2005) Filed July 25, 2005; effective through January 6, 2006. (07-25)
- 1240 - Department of Commerce and Insurance - Division of Insurance - Emergency Rules promulgated with respect to proper standards for health insurance issuers in paying insurance producers that sell contracts of health insurance coverage, Chapter 0780-1-88 TN Health Insurance Portability, Availability and Renewability Regulations - 8 T.A.R., Volume 31, Number 8, (August 2005) Filed July 26, 2005; effective through January 7, 2006. (07-32)
- 1360 - Department of State - Division of Charitable Solicitations - Emergency rules regarding procedure for filing applications, amendments, and financial accounting reports for organizations exempt from federal taxation, Chapter 1360-3-2 Procedures for Operating Charitable Gaming Events, 9 T.A.R., Volume 31 Number 9 (September 2005) Filed August 11, 2005; effective January 23, 2006. (08-14)

EMERGENCY RULES

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF UNDERGROUND STORAGE TANKS

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. § 4-5-208, the Tennessee Petroleum Underground Storage Tank Board is promulgating emergency rules addressing nonmetallic underground piping connected to petroleum underground storage tanks. The emergency rules are necessary to prevent the use of nonmetallic flexible piping that does not meet the Underwriters Laboratories revised standard (UL 971, July 1, 2005) for nonmetallic piping in the state of Tennessee for new underground storage tank system installations and/or for replacement of existing underground piping, so that releases of petroleum to the environment can be prevented.

The Tennessee Petroleum Underground Storage Tank Board has made a finding that there is an emergency creating a danger to public health, safety and the environment as well as a threat of increased expenditures from the Tennessee Petroleum Underground Storage Tank Fund. The nature of this danger is such that the use of any other form of rulemaking would not adequately protect the public.

Underwriters Laboratories issued a revised standard (UL 971) for nonmetallic piping on July 1, 2005. Hundreds of underground storage tank facilities in the United States have experienced problems with nonmetallic flexible piping that does not comply with the revised standard (UL 971). These problems range from early detection of visible changes in the appearance of the piping to actual releases of petroleum products into the environment due to piping deterioration. Some states have already taken action to prevent the future use of nonmetallic flexible piping that does not comply with the revised standard (UL 971). Several other states are in the process of putting such requirements in place. Three of these states are in the southeastern United States, two of them share a border with Tennessee. As the marketplace for non-compliant piping is decreased one state at a time, those states that do not have restrictions in place could become the marketplace of last resort for companies with existing stock of nonmetallic flexible piping that does not comply with the revised standard (UL 971). Without an emergency rule to eliminate the use of this piping in Tennessee, there could be many more underground storage tank facilities in Tennessee with this non-compliant underground piping conveying petroleum products into and out of petroleum underground storage tanks.

Therefore, unless emergency rules that establish requirements for nonmetallic flexible piping are adopted, there could be an increased risk to human health, safety and the environment due to the continued use of certain types of nonmetallic flexible piping. Furthermore, the Tennessee Petroleum Underground Storage Tank Fund would be adversely impacted due to clean-up costs associated with releases to the environment from nonmetallic flexible piping that does not comply with the revised standard (UL 971).

For a copy of this emergency rule, contact: Donna Washburn, Deputy Director, Division of Underground Storage Tanks, Department of Environment and Conservation, 4th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee, 37243; telephone 615-532-0987.

Hugh M. Calloway, Jr.
Chairman
Tennessee Petroleum Underground
Storage Tank Board

EMERGENCY RULES

EMERGENCY RULES OF THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF UNDERGROUND STORAGE TANKS

CHAPTER 1200-1-15 UNDERGROUND STORAGE TANK PROGRAM

AMENDMENTS

Rule 1200-1-15-.02 UST Systems: Design, Construction, Installation and Notification is being amended as follows:

Subparagraph (b) of paragraph (1) is amended by deleting and replacing part 1 and by making other minor changes so that subparagraph (b) shall read as follows:

(b) Piping. The piping that routinely contains petroleum and is in contact with the ground shall be properly designed, constructed and protected from corrosion in accordance with one of the parts of this subparagraph.

1. Piping, whether rigid or flexible in design, that is constructed of nonmetallic materials, and complies with subparts (i) and (ii) of this part.

(i) Piping installed on or after the effective date of this rule shall meet or exceed the Standard for Safety established by Underwriters Laboratory in UL 971 - "Non-Metallic Underground Piping for Flammable Liquids", July 1, 2005. This requirement shall apply to all new and/or replacement piping.

(ii) Pipe marking or labeling shall comply with the Underwriters Laboratory standard referenced in subpart (i) of this part. Piping shall, at a minimum, be permanently and legibly marked with the following information at ten (10) foot intervals:

(I) The manufacturer's name, trade name, trademark, or other information that identifies the manufacturer;

(II) Manufacturing date, or a verifiable date code, accurate to at least the quarter of a year in which the pipe was manufactured;

(III) The nominal size of the pipe and a number identifying the pipe, such as a catalog, model or part number;

(IV) The maximum pressure rating (psig) and the statement: Underground Use Only;

(V) The type of pipe system(s), which may be abbreviated, and which may include, but not be limited to:

I. Primary Carrier;

II. Secondary Containment;

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- III. Integral Primary/Secondary;
 - IV. Normal Vent; and/or
 - V. Vapor Recovery;
 - (VI) The flammable liquid group rating(s), which may be abbreviated, and which may include, but not be limited to:
 - I. Motor Vehicle Fuels;
 - II. Concentrated Fuels;
 - III. High Blend Fuel; and/or
 - IV. Aviation and Marine Fuels.
2. Piping that is constructed of steel and is cathodically protected in the following manner:
- (i) The piping is coated with a suitable dielectric material;
 - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (iii) Impressed current systems are designed to allow determination of current operating status as required in rule 1200-1-15-.03(2)(c); and
 - (iv) Cathodic protection systems are operated and maintained in accordance with rule 1200-1-15-.03(2) or in a manner determined by the Division to provide equivalent protection against corrosion.
3. The piping is constructed of metal without additional corrosion protection measures provided that:
- (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and
 - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (b)3(i) of rule 1200-1-15-.02(1) for the remaining life of the piping; or
4. The piping construction and corrosion protection are determined by the Division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than the requirements in parts (b)1 through 3 of rule 1200-1-15-.02(1).

Rule 1200-1-15-.02 is being further amended by adding a new paragraph, to be designated as paragraph 1200-1-15-.02(4), which shall read:

- (4) Replacement piping.

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Any underground piping installed to replace existing piping shall meet the requirements set forth in subparagraph (1)(b) of this rule.

Authority: *T.C.A. §68-215-107 et seq. and T.C.A. §4-5-201 et seq.*

The emergency rules set out herein was properly filed in the Department of State on the 28th day of October, 2005 and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 11th day of April, 2006. (10-37)

EMERGENCY RULES

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

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

The Tennessee Department of Human Services implemented new Income Shares Child Support Guidelines on January 18, 2005 in Chapter 1240-2-4 of the Department's rules which considers the income of both parents. These Guidelines replaced Child Support Guidelines that were based on a Flat Percentage model which considered only the income of the obligor parent.

Prior to filing a final version of the new Child Support Guidelines, the Department engaged in extensive meetings and discussions with various stakeholders in the child support community. During these discussions, a concern was repeatedly expressed that, upon implementation of the new Guidelines methodology, if nothing was done to manage the manner in which existing child support orders could be modified, the change, in and of itself, might result in relatively significant increases or decreases in existing orders due solely to a change in the formula under the new methodology for calculating child support. Additionally, Tennessee courts would be subjected to an unusually high volume of requests for modification by parents seeking to improve their respective financial positions by modifying the amount of their existing child support order using the new Guidelines methodology.

In order to alleviate this concern, the Department agreed to limit, until January 1, 2006, the ability to modify existing child support orders by adding additional requirements to the previous criteria for a "significant variance" that is required to permit modification of an existing child support order. The previous criteria for modification of an existing order required only a fifteen percent (15%) difference between the existing order and the proposed new order, based on increases or decreases in the obligor's income. The additional criteria under the new Income Shares Guidelines include:

1. At least a fifteen percent (15%) change in the gross income of the ARP [Alternate Residential Parent, a/k/a obligor]; and/or
2. A change in the number of children for whom the ARP is legally responsible and actually supporting; and/or
3. A child supported by this order becoming disabled; and/or
4. The parties voluntarily entering into an agreed order to modify support in compliance with these Rules, and submitting completed worksheets with the agreed order;

These additional requirements will automatically expire on December 31, 2005, by operation of Rule 1240-2-4-.05(7), and the criteria for a significant variance will revert to only the fifteen percent (15%) difference between the existing and proposed orders.

In April 2005, after implementation of the new Guidelines, the Department created an Income Shares Advisory Committee to address any questions and concerns that may have arisen following application of the new rules to specific child support cases that had been litigated since the rules were implemented, and to make recommendations for possible improvements based on those experiences. Additionally, by operation of Senate Bill 707/House Bill 122 (2005), the Advisory Committee is required to report its findings and recommendations to the Senate Judiciary Committee and the House Children and Family Affairs Committee by no later than February 15, 2006.

In considering the basis for modification of child support orders, the Advisory Committee recommended that the current additional requirements noted above for establishing a significant variance be added permanently to the definition. Members of the Committee have expressed concern about the impact of a modification in individual child support cases, based solely on the difference between the methodology of the former Flat Percentage of Income guidelines and the methodology of the current Income Shares guidelines. Members

EMERGENCY RULES

have found that application of the new Income Shares Guidelines methodology to orders established under the previous guideline model may result in a significant change in the amount of the child support obligation due only to the change in methodologies, with the potential of imposing great hardship on the obligee (a/k/a Primary Residential Parent or PRP) whose child support has been greatly decreased or on the obligor (ARP) whose obligation has been greatly increased. In the opinion of the Committee, the potential impact of this hardship will be greatly diminished by limiting the availability of modifications by continuation of the existing criteria.

In addition, in the estimation of the Committee, this change is necessary to, again, limit an expected high volume of petitions seeking modification of child support orders that has been anticipated throughout this year, after the additional criteria expire on December 31, 2005.

In order to meaningfully implement this recommendation, and thereby greatly limit the hardship imposed on children, parents, and the Tennessee court system, a change to the existing Guidelines must be made prior to January 1, 2006, the date when the additional significant variance criteria will cease to apply. From the date the Committee made the recommendation, September 15, 2005, the Department had one hundred seven (107) days to complete a rule change. The rulemaking hearing process would require a minimum of one hundred twenty (120) days to promulgate a permanent rule, thus, the criteria limiting the ability to modify child support orders would expire before the change to the rule to make permanent the existing limitations would become effective.

Additionally, if this recommended and important change to the rule is done through the rulemaking hearing process, significant confusion to litigants, the bar, and the courts will be created by allowing the expiration of the existing limits on the ability to modify child support orders only to later modify the rules to re-establish the limiting criteria as recommended by the Committee. This result, necessitated by the rulemaking hearing process, would create a period of short duration in which orders may be modified with less proof, followed very shortly by a permanent rule which re-establishes the more stringent previously existing criteria. In addition to confusion, the intervening period would create the significant likelihood of delays in the consideration of petitions for modification as parties seek real or perceived advantages from delay. Conversely, the intervening period may create a rush to the courthouse to file petitions for modification to take advantage of the absence of the limiting criteria. Either circumstance further presents the serious potential of increased litigation regarding when and whether petitions for modification of child support orders could be considered under the less restricted criteria during the intervening period. These delays and the additional and unnecessary litigation will serve to disrupt the orderly operation of the child support system on which thousands of children depend, will result in unnecessary increased volume for courts and unnecessary added litigation expenses to the parties.

Accordingly, under the Administrative Procedures Act, emergency rules are the only viable mechanism available for making this important change to the Child Support Guidelines and for preventing potential serious confusion and unnecessary litigation.

The Department, therefore, finds that an immediate danger to the public welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by Tennessee Code Annotated, Section 4-5-201 et seq., would not adequately protect the public.

For a copy of this emergency rule, contact: Conswella R. Wilkes, Legal Assistant, Citizens Plaza Building, 15th Floor, 400 Deaderick Street, Nashville, Tennessee 37248-0006 (615) 313-6673.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

EMERGENCY RULES

EMERGENCY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT SERVICES DIVISION

1240-2-4
CHILD SUPPORT GUIDELINES

1240-2-4-.05, Modification of Child Support Orders, is amended by deleting paragraph (7) in its entirety.

Authority: T.C.A. §§ 4-5-202; 36-5-101(a)(1) and (e); 36-5-103(f); 71-1-105(12), (16); 71-1-132; 42 U.S.C. § 667, 45 C.F.R. §§ 302.56, 303.8.

The emergency rules set out herein were properly filed in the Department of State on the 14th day of October, 2005, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 28th day of March, 2006. (10-16)

EMERGENCY RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF BOILER AND ELEVATOR INSPECTION

STATEMENT OF NECESSITY REQUIRING AN EMERGENCY RULE

For a copy of the emergency rule, 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.

Chapter 0800-3-15 has been assigned to the Tennessee Department of Labor and Workforce Development for its emergency rule regarding the standards for the emergency keyed lock box

There were numerous reports that a fire at a Nashville nursing home in September 2003 took the lives of many and critically injured others. Firefighters were hampered in their efforts because the elevators were recalled to the lobby floor with the doors open. The fire was away from the elevators and on the third floor; the key was on the fourth floor. If the elevators had been operational, the fire may not have been so tragic.

The General Assembly took the lead to prevent such a tragedy in the future by enacting Public Chapter 404. Under the legislation, each hospital, recuperation center, nursing home, residential hospice, home for the aged, residential HIV supportive living facility, assisted-care living facility or ambulatory surgical treatment center licensed under Title 68, Chapter 11 of the Tennessee Code Annotated, all student dormitories and other university housing with functioning elevators operating under the control of the Board of Trustees of the University of Tennessee and the Board of Regents, and each state-owned public building under the Department of General Service's control, including the state capitol and capitol annexes must ensure that an emergency keyed lock box is installed. In addition, the Tennessee Department of Labor and Workforce Development was required to approve the general standards for the design of an emergency keyed lock box. The Department has approved the general standards for the emergency keyed lock box.

In the event of a fire emergency, time is critical in saving lives. Because of the immediate danger to the public health, safety, and welfare, the Department is promulgating the emergency rule. Firefighters and state elevator inspectors will have immediate access to the emergency keyed lock boxes and ultimately the elevators. The emergency keyed lock box shall be permanently surface mounted seventy-two inches (72") from the floor to the center of the box at each bank of elevators at the main egress of the building, be operable by a universal key no matter where such box is located within the state of Tennessee, and shall contain only fire service keys and drop keys to the appropriate elevators. For additional protection, the universal key shall be provided by vendors only to firefighters and state elevator inspectors.

Gary W. Cookston
Director, Division of Boiler and Elevator Inspection

EMERGENCY RULES

EMERGENCY RULE
OF
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF BOILER AND ELEVATOR INSPECTION

CHAPTER 0800-3-15
FIRE SAFETY FOR ELEVATORS

NEW RULE

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0800-3-15-.01 General Standards for Emergency Keyed Lock Box

0800-3-15-.01 GENERAL STANDARDS FOR EMERGENCY KEYED LOCK BOX.

- (1) Each hospital, recuperation center, nursing home, residential hospice, home for the aged, residential HIV supportive living facility, assisted-care living facility or ambulatory surgical treatment center licensed under Title 68, Chapter 11 of the Tennessee Code Annotated, all student dormitories and other university housing with functioning elevators operating under the control of the Board of Trustees of the University of Tennessee and the Board of Regents, and each state-owned public building under the Department of General Service's control, including the state capitol and capitol annexes must ensure that an emergency keyed lock box is installed.
- (2) The general standards for the emergency keyed lock box shall be as follows:
 - (a) Dimensions – No larger than ten inches (10") high by six inches (6") wide by two inches (2") deep or smaller than nine inches (9") high by five inches (5") wide by one and three-eighths of an inch (1 3/8") deep;
 - (b) Color – Red;
 - (c) Door Cover – Brushed or mirrored finish, bronze or stainless steel;
 - (d) Letters – Three-eighths of an inch (3/8") high in black with the first line FIRE DEPARTMENT, the second line ELEVATOR AUTHORITY, and the third line USE ONLY; and
 - (e) Universal Key – Gamewell 25460 which shall be provided by the vendors only to firefighters and state elevator inspectors.
- (3) The emergency keyed lock box shall be permanently surface mounted seventy-two inches (72") from the floor to the center of the box at each bank of elevators at the main egress of the building, shall be operable by a universal key no matter where such box is located within the state of Tennessee, and shall contain only fire service keys and drop keys to the appropriate elevators.

Authority: 2005 Tenn. Acts ch. 404.

The emergency rule set out herein was properly filed in the Department of State on the 11th day of October, 2005, and will be effective from the date of filing for a period of 165 days. The emergency rule will remain in effect through the 25th day of March, 2006. (10-12)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF BOILER AND ELEVATOR INSPECTION

CHAPTER 0800-3-15 FIRE SAFETY FOR ELEVATORS

Presented herein is a proposed rule of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, 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 this proposed 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 this proposed rule is 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 proposed rule or submitted by a municipality which will be affected by proposed 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 rule, 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.

NEW RULE

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0800-3-15-.01 General Standards for Emergency Keyed Lock Box

0800-3-15-.01 GENERAL STANDARDS FOR EMERGENCY KEYED LOCK BOX.

- (1) Each hospital, recuperation center, nursing home, residential hospice, home for the aged, residential HIV supportive living facility, assisted-care living facility or ambulatory surgical student dormitories and other university housing with functioning elevators operating under the control of the Board of Trustees of the University of Tennessee and the Board of Regents, and each state-owned public building under the Department of General Service's control, including the state capitol and capitol annexes must ensure that an emergency keyed lock box is installed.
- (2) The general standards for the emergency keyed lock box shall be as follows:
 - (a) Dimensions – No larger than ten inches (10") high by six inches (6") wide by two inches (2") deep or smaller than nine inches (9") high by five inches (5") wide by one and three-eighths of an inch (1 3/8") deep;
 - (b) Color – Red;
 - (c) Door Cover – Brushed or mirrored finish, bronze or stainless steel;
 - (d) Letters – Three-eighths of an inch (3/8") high in black with the first line FIRE DEPARTMENT, the second line ELEVATOR AUTHORITY, and the third line USE ONLY; and
 - (e) Universal Key – Gamewell 25460 which shall be provided by the vendors only to firefighters and state elevator inspectors.

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- (3) The emergency keyed lock box shall be permanently surface mounted seventy-two inches (72") from the floor to the center of the box at each bank of elevators at the main egress of the building, shall be operable by a universal key no matter where such box is located within the state of Tennessee, and shall contain only fire service keys and drop keys to the appropriate elevators.

Authority: 2005 Tenn. Acts ch. 404.

The proposed rule set out herein was properly filed in the Department of State on the 12th day of October, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of February, 2006. (10-14)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF SAFETY - 1360 TENNESSEE HIGHWAY PATROL

CHAPTER 1340-7-1 EMPLOYEE CRITERIA FOR TENNESSEE HIGHWAY PATROL

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

For a copy of this proposed rule contact: Jason Hunnicutt, Staff Attorney, Tennessee Department of Safety, Legal Division, 1150 Foster Avenue, Nashville, TN 37249, 615-251-5277.

The text of the proposed rule is as follows:

NEW RULES

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1340-7-1-.01 Purpose
1340-7-1-.02 Definitions
1340-7-1-.03 Employee Criteria

1340-7-1-.01 PURPOSE

- (1) To establish uniform criteria for employment as a commissioned officer and dispatcher with law enforcement agencies that are a part of the Department of Safety.

Authority: T.C.A. §§4-3-2009 and 4-7-112.

1340-7-1-.02 DEFINITIONS

- (1) "Commissioner" means the Commissioner of the Department of Safety.
- (2) "Department" means the Tennessee Department of Safety.
- (3) "Lawful Permanent Resident" means the status of having been accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.
- (4) "Commissioned Officer" means those officers appointed and sworn according to T.C.A. §4-7-102.

Authority: T.C.A. §§4-3-2009 and 4-7-112.

PROPOSED RULES

1340-7-1-.03 EMPLOYEE CRITERIA

- (1) A Commissioned Officer of the Department or a dispatcher of the Department shall be either a citizen of the United States or a Lawful Permanent Resident of the United States. This rule shall apply only to those Commissioned Officers and dispatchers hired after the effective date of this rule.

Authority: *T.C.A. §§4-3-2009 and 4-7-112.*

The proposed rules set out herein were properly filed in the Department of State on the 28th day of October, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of February, 2006. (10-42)

PROPOSED RULES

DEPARTMENT OF STATE-1360 DIVISION OF CHARITABLE SOLICITATIONS CHARITABLE GAMING SECTION

CHAPTER 1360-3-3 PROCEDURES FOR OPERATING CHARITABLE GAMING EVENTS

Presented herein are proposed rules of the Charitable Solicitations Division submitted pursuant to T.C.A. §§4—5—202 and 3-17-115(a) in lieu of a rulemaking hearing. It is the intent of the Charitable Solicitations Division to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in the Division of Charitable Solicitations, Eighth Floor, Tennessee Tower, William Snodgrass Building, located at 312 8th Avenue North, Nashville, TN 37243, and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Judy Bond-McKissack, Acting Director, Division of Charitable Solicitations and Gaming, Department of State, 8th Floor, William R. Snodgrass Building, Nashville, TN 37243, Charitable Solicitations Division, and 615-741-2555.

The text of the proposed rules is as follows:

NEW RULES

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1360-3-3-.01	Definitions
1360-3-3-.02	Application Sliding Fee Scale
1360-3-3-.03	Applications for Authorization to hold an Annual Gaming Event- Time to Submit Applications
1360-3-3-.04	Proof of Active and Continuous Existence
1360-3-3-.05	Proof of §501(c)(3) Tax Exempt Status and Purpose(s)
1360-3-3-.06	Description of the Game
1360-3-3-.07	Prohibited/ Allowed Types of Games
1360-3-3-.08	Action by Board of Directors
1360-3-3-.09	Amendment Process- Conflicting Locations, Other Amendments
1360-3-3-.10	Conduct of the Game
1360-3-3-.11	Criminal Background Checks
1360-3-3-.12	Accounting Procedures
1360-3-3-.13	Proof that Net Event Proceeds Were Used for Charitable Purpose
1360-3-3-.14	Disqualifications/Civil Penalties
1360-3-3-.15	Co-operation with other State Agencies

1360-3-3-.01 DEFINITIONS.

- (1) “Amended annual event application” means those items of information submitted to the Secretary for the purpose of revising, correcting, adding to, or otherwise

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supplementing an annual event application in order to meet the requirements of the Tennessee Charitable Gaming Implementation Law.

- (2) “Conformed copy” A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy shall contain the signatures and dates as shown on the originals. A certificate of incorporation shall be date stamped and show approval by an appropriate state official.
- (3) “Compensation” for purposes of T.C.A. § 3-17-103(a)5(A)(i)(b) means anything of value received as a result of work performed on behalf of a §501(c)(3) organization, including, but not limited to, tips, reductions, and waivers of fees.
- (4) “Directors or officers of the organization” for purposes of T.C.A. §3-17-104 (a)(12) means the entire slate of members of the governing body of an organization. An executive committee or subcommittee of a governing board shall not qualify as the directors or officers of the organization, unless the organization’s by-laws authorize an executive committee to act on behalf of the full board.
- (5) “Fair Market Value” means a price at which an unrelated buyer and seller would agree to a transaction; a valuation that is reasonable to all parties involved in a transaction, none of which are under a compulsion to buy or sell while having a reasonable knowledge of the relevant facts.
- (6) “Games of chance associated with casinos” includes casino night parties (also known as “Vegas Nights”, “Las Vegas Nights”, “Monte Carlo Nights”)
- (7) “Notice”, unless otherwise indicated, shall mean a written communication forwarded by U.S. mail, certified return receipt requested.
- (8) “Operate” means
 - (a) To run or control, directly or indirectly, the functioning of an annual gaming event;
 - (b) To bring about a desired or proper effect including, but not limited to, planning, promoting, advertising, marketing, authorizing or entering into agreements, purchasing supplies, telephone services, gaming records or devices, buying or leasing services, facilities or locations, printing of materials and tickets, shares, chances or similar records and the transporting of such records and other devices;
 - (c) To conduct the affairs of an event including, but not limited to, on-site or off-site management;
- (9) “Organizational document” shall mean the record that establishes the organization as a legal entity and shall include, but not be limited to, a certified copy of the Articles of Incorporation (or charter), constitution, or trust agreement.
- (10) “Physical Presence” means an organization has a tangible office established and located within the state of Tennessee where regular business within the organization’s stated mission is transacted. The existence of a post office mailing address or drop box location is not sufficient to create a physical presence.

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- (11) "Pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols which must be exposed by the player to determine wins or losses. Pull tabs may also be known as break-opens, hard cards, banded tickets, jar tickets, pickle cards, Lucky Seven Cards, Nevada Club tickets, instant bingo cards.
- (12) "Secretary" means the Secretary of state or the Secretary's authorized representative.

Authority: T.C.A. §§ 3-17-103(a)(3)(B)(i), 3-17-103(a)(5)(A)(i)(a), 3-17-103(a)(5)(B)(i), 3-17-102(A), 3-17-102(8)(A), and 3-17-103(d)(1)(B); T.C.A. § 3-17-104 (a)(12); T.C.A. § 3-17-105(d)(2)(B); T.C.A. § 3-17-115(a).

1360-3-3-.02 APPLICATION SLIDING FEE SCALE.

An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:

Event Gross Revenue	Filing Fee
\$0.00 to \$5,000.00	\$150.00
\$5001.00 to \$10,000.00	\$300.00
\$10,001.00 to \$20,000.00	\$450.00
over \$20,001.00	\$600.00

Authority: Public Chapter 207 § 14, 2005; T.C.A. § 3-17-115(a).

1360-3-3-.03 APPLICATIONS FOR AUTHORIZATION TO HOLD AN ANNUAL GAMING EVENT- TIME TO SUBMIT APPLICATIONS.

- (1) Application Period. An application for authorization to hold an annual gaming event shall be submitted beginning July 1 and ending October 31st of each year.
- (2) Last Date to File. When the first or last day to file an application is a non-business day (e.g., weekend, holiday), the first or last day to file is the first business day immediately following the date established by statute. (Example: July 1, the first day to file an application, is a Sunday. The first filing day is the first business day following Sunday.)
- (3) Timely Filing. The postmark date on the annual event application shall determine whether an amendment is timely filed. An application submitted beyond the time set forth in the Act shall be automatically rejected.
- (4) Incomplete application. An application that does not comply with the provisions of the Act shall be rejected. The Secretary shall notify the applicant of the reasons for rejection of the application. Corrections to a deficient application shall be submitted no later than 12:00 noon, February 1 in the year subsequent to the filing of the application. If this date falls on a non-business day, the last day to file an amendment shall be 12:00 noon the last business day preceding the deadline date.

Authority: 3-17-105(a)(1) and (d)(2)(B); T.C.A. §§ 3-17-115(a); Public Chapter 207 §§ 3 and 9, 2005.

PROPOSED RULES

1360-3-3-.04 PROOF OF ACTIVE AND CONTINUOUS EXISTENCE.

- (1) **Acceptable Proof.** In addition to the requirements set out in Public Chapter 476, as amended, §3-17-101 et. seq., an organization may submit as proof of its continuous and active existence, including, but not limited to, the following types of information:
 - (a) A copy of the last five (5) annual Forms 990, 990-EZ, or 990-PF filed with the Internal Revenue Service for the five (5) year period immediately preceding the date of application;
 - (b) If the organization is a corporation, a copy of the last five (5) annual reports filed with the Secretary's Business Services Division for the five (5) year period immediately preceding the date of application;
 - (c) Copies of the organization's written authorization to conduct charitable solicitation for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application.
 - (d) Copies of published annual reports of the organization for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application;
 - (e) Copies of audited financial statements prepared by an independent certified public accountant and which covers the five (5) year period immediately preceding the date of application;
 - (f) Copies of minutes of annual meetings duly recorded and attested to by the secretary of the organization and which covers the five (5) year period immediately preceding the date of application;
 - (g) Copies of grant approval and continuation notices received by the organization and which covers the five (5) year period immediately preceding the date of application; and/or
 - (h) Copies of printed advertisements for the organization showing the date of publication of the advertisement and which covers the five (5) year period immediately preceding the date of application.
- (2) **Multiple Forms of Proof.** An organization may submit copies of documents from two or more types as indicated above, so long as documents cover the five (5) year period immediately preceding the date of application. (Example: Organized in 1995, organization was not required to file IRS Form 990 until Year 2001. An annual event application is filed July 1, 2004. It may submit Forms 990 for years 2001, 2002, 2003 and annual reports filed with Business Services Division for years 1999 and 2000.
- (3) **Authentic Documents.** Acceptable documents must be authentic, genuine or bona fide documents. Copies of documents must be conformed copies.

Authority: T.C.A. § 3-17-104(a)(6); T.C.A. § 3-17-115(a).

PROPOSED RULES

1360-3-3-.05 PROOF OF §501(C)(3) TAX EXEMPT STATUS AND PURPOSE(S).

- (1) Chapters or Affiliates. An organization which is a chapter or affiliate operating under a Section 501(c)(3) group exemption must have its own federal employer identification number and shall submit the following documents in support of its tax exempt status:
 - (a) The Letter of Determination of the parent organization assigned by the Internal Revenue Service which includes the group's 4-digit tax exemption number;
 - (b) A list of all chapters and affiliates under the group exemption as submitted by the parent organization to the Internal Revenue Service, including the federal tax identification number and physical address of each chapter or affiliate;
 - (c) A written statement from the parent organization that the applicant is in good standing with the parent organization;
 - (d) A properly executed Affidavit of the organization's 501(c)(3) status [Secretary of State Form SS-6060]; and,
 - (e) A copy of the organizational document.
- (2) Recognition Prior to 1969. An organization recognized as exempt from federal income taxation by the Internal Revenue Service prior to October 9, 1969, that would otherwise qualify as a 501(c)(3) organization shall, in addition to the requirements of T.C.A. §3-17-103, submit the following documents in lieu of IRS form 1023 in support of its tax exempt status/purpose(s):
 - (a) A detailed narrative of all of the activities of the organization. List each activity in order of importance based on the relative time and resources devoted to the activity. Indicate the percentage of time for each activity; and
 - (b) A Statement of Revenue and Expenses for the five (5) years immediately preceding the period under consideration.
- (3) Exempt Purposes. For purposes of clarification, these regulations adopt the following language of the Internal Revenue Service: The exempt purposes of §501 (c)(3) organizations are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.
- (4) Nature of Operation. To be tax-exempt as an organization described in IRC Section 501(c)(3), an organization must be organized and operated exclusively for one or more of the purposes set forth in this code section and none of the earnings of the organization may benefit or provide any advantage to any private shareholder or individual.

Authority: T.C.A. § 3-17-102(1); § 3-17-104(a)(6); T.C.A. § 3-17-115(a); I.R.C. § 501.

PROPOSED RULES

1360-3-3-.06 DESCRIPTION OF THE GAMES.

Severe penalties may be imposed for violation of the Act including the playing of an unauthorized type of game. Therefore it is essential that any chosen game of chance fall within the permissive language of the Act. Every application seeking authorization to hold an annual gaming event must provide a detailed written explanation and description of the game. Relevant information should include the details of what the game is, how it is operated by the organization and how it is played by a contestant or player.

Authority: T.C.A. § 3-17-102(8)(A)(i)-(iv), (B); T.C.A. § 3-17-104(a)(14)(A); T.C.A. § 3-17-115(a).

1360-3-3-.07 Prohibited/Allowed Types of Games.

- (1) The playing of bingo or a similar game under another name (e.g. "Lotteria") at an annual gaming event is expressly prohibited. The following types of games are also prohibited during the conduct of any annual gaming event:
 - Video lottery
 - Slot machines
 - Roulette wheels
 - Other games of chance associated with casinos
 - Pull tabs
 - Punchboards
 - Instant bingo
 - Instant and on-line lottery games of a type operated by the Tennessee education lottery corporation
- (2) The following list provides some guidance as to the types of games which shall be allowed. This list is not intended to include every type of authorized game.
 - Raffles
 - Reverse Raffles
 - Lotteries
 - Sweepstakes
 - Duck Races
 - Cakewalks
 - Cake wheels
- (3) All organizations must comply with the provisions of the Act, including an organization that intends to conduct a cash or prize giveaway and give some, but not all, persons wishing to participate an opportunity to do so without requiring the payment of any money or other consideration, the making of a donation, or the purchasing of a product or service.

Authority: T.C.A. § 3-17-102(8)(A)(i)-(iv); T.C.A. § 3-17-115(a).

1360-3-3-.08 ACTION BY BOARD OF DIRECTORS.

- (1) Majority Vote Required. Governing body (e.g., board of directors, trustees). The organization must disclose in the annual event application the total number of members of its governing body for the period in question and the name and address of each member.

PROPOSED RULES

- (2) Meeting Minutes. The governing body shall meet, either by regular or special meeting, if it intends to operate an annual gaming event. Unless otherwise provided by its by-laws, the meeting may be conducted through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. Action taken by consent without a meeting (e.g., consent communicated by e-mail or facsimile transmission) is not authorized by the Act.
- (3) Majority Vote Required. The minutes shall reflect an affirmative vote by a majority of all current members of the governing body and must be signed and attested by the board secretary.
- (4) Affidavit in Lieu of Minutes. In lieu of regular or special minutes of the board of directors, an organization shall submit an affidavit (Secretary of State Form SS-6062) indicating the date of the meeting, the total number of directors or trustees present, and the number casting an affirmative vote to operate a gaming event. The affidavit must bear the notarized signatures of all members of the governing body, whether or not a member attended the meeting or voted in the affirmative to operate an event.

Authority: T.C.A. §§ 3-17-104(a)(10) and 3-17-104(a)(12); T.C.A. § 3-17-115(a); Public Chapter 207 § 10, 2005.

1360-3-3-.09 AMENDMENT PROCESS- CONFLICTING LOCATIONS, OTHER AMENDMENTS.

- (1) Timely Communication. In addition to the requirements §§3-17-104 and 3-17-105(b), all organizations must provide either an e-mail address or fax number in order to facilitate speedy communication. Organizations must respond to requests from the Secretary within 10 days but in no event shall a response be received later than 24 hours prior to any filing deadline.
- (2) Form of Amendment. An amendment form (SOS Form No. SS-6065) shall be used to notify the Secretary of a change of location, or any other amendment. An organization may fax a completed amendment form to the Charitable Gaming Section at 615-253-5173. Forms may be obtained from the Charitable Gaming Section and are also available on the Secretary of State's website: <http://www.state.tennessee.gov/sos/charity/gaming.htm>.
- (3) Filing of Amendments. Amendments shall be accepted for filing until 12:00 Noon, February 1 of each year subsequent to the filing of the application. The date and time stamp endorsement of the Secretary shall determine whether an amendment is timely filed. In accordance with the provisions of §3-17-105(d)(2)(A), the Secretary shall have no authority to accept, and shall not accept, an annual event application, or an amendment thereto, submitted after the application deadline has passed for the appropriate annual event period.
- (4) Annual Event Location Changes:
 - (a) Only two annual events can be held at any location during a calendar month. Only one organization can use a location that has previously been approved for another organization during that month. Example: ABC organization has an event at 1 Highway, Anytown, Tennessee on July 4, 2004. A second organization has also scheduled an annual event in July at that location. No other organization can use the same location for its event during the month of July, 2004, even if the event is on a different date.

PROPOSED RULES

- (b) An address which has multiple suites or units at the same location shall be counted as one location for purposes of choosing an annual gaming event location. If it becomes necessary for an organization to change the date of its annual gaming event due to a conflict or unavailability of a chosen location, an amendment form (SOS Form No. SS-6065) must be filed with the Secretary specifying the location which caused the conflict and the full address/location of the new proposed location which has been chosen. Amendments shall not be accepted for filing after the amendment deadline.
- (5) Annual Event Date Changes:
- (a) **Conflicting Dates.** Only two organizations shall be allowed to hold an annual gaming event at a facility during any calendar month. Annual gaming event dates will be approved on a first-come, first-serve basis as determined by the date stamp on the application. If the Secretary receives an application which designates the same location for an event which has already been approved for two other organizations, notice will be provided to the organization of the conflict. In order to expedite the notice process, the Secretary will provide notice by e-mail or facsimile message. If an organization must change its annual gaming event date in order to correct or avoid a conflict with another organization, an amendment form must be filed with the Secretary specifying the event date which caused the conflict, the full address/location of the proposed event and the new date which has been chosen. Amendments shall not be accepted for filing after the application deadline. Because amendments cannot be accepted after the application deadline, an organization should plan carefully and file its application well in advance of the October 31st deadline for receipt of applications and the February 1st deadline for receipt of amendments so that a change of event date will not be barred by the filing deadline.
 - (b) **Changes of Event Date within Fourteen (14) days of Event.** Tennessee Code Annotated § 3-17-102 (d)(1)(A) allows an organization to hold an event within fourteen (14) days of the date listed in its application. All event date amendments must be filed with the office of the Secretary of State including changes for an event date scheduled within 14 days of the original annual event date. In addition, notice of event date changes must be filed with the local law enforcement officer. In accordance with the provisions of §3-17-102(a)(1), except as indicated above, the Secretary shall have no authority to accept, and shall not accept, an annual event application, or an amendment thereto, submitted after the application deadline has passed for the appropriate annual event period.
 - (c) **Determining the Fourteen (14) Day Period.** The fourteen (14) calendar day period prescribed by §3-17-102(d)(1)(A), within which an organization must hold an annual gaming event, may be counted beginning fourteen days prior to the event date listed in the annual event application or fourteen days after the event date listed in the annual event application.

Authority: T.C.A. § 3-17-103(a)(3)(B)(i),(iii); T.C.A. § 3-17-103(d)(1)(B); T.C.A. § 3-17-105(b)(1),(2); T.C.A. § 105(d)(2)(B); T.C.A. § 3-17-115(a); Public Chapter 207 § 15, 2005.

PROPOSED RULES

1360-3-3-.10 CONDUCT OF THE GAMES.

- (1) Advertising. Nothing in the act shall be construed as prohibiting an organization from accepting donations of advertising services. For purposes of the Act and these rules, however, granting permission to post flyers for an event on the premises of a vendor shall not be construed as donating advertising services.
- (2) Ticket Sales and Sale of Similar Records. Persons under the age of eighteen (18) are prohibited from selling or purchasing tickets and similar records for charitable gaming activities.
- (3) Officer(s) Responsible for Gross Receipts. The authorized organization shall duly designate an officer/officers of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all gaming event receipts. Such officer(s) name shall appear on the list required under T.C.A. §3-17-104 (a) (20) and (21).
- (4) Payment of Workers Prohibited. No commission, salary, compensation, reward, recompense, reimbursement of expenses, or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any annual gaming event except as hereinafter provided for bookkeepers or accountants who assist by rendering their professional services.
No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of an annual gaming event either directly or indirectly.
- (5) Regular Salary or Wages for Employee not "Compensation". The regular salary or wages of a regular and full time employee, or a regular but part-time employee shall not be considered to be "compensation" within the meaning of the Act when it is performed by a person who has been regularly employed by the authorized organization and when all of the following conditions are met:
 - (a) The position held by the employee has been created for the purposes unrelated to the conduct of the annual gaming event and the required performance of duties is generally unrelated to the annual gaming event. The employee's contribution to an annual gaming event must be an incidental part of his or her total duties consisting of less than 10% of the total time worked for the organization; and
 - (b) The employee is paid on a recurring basis at a regular and established rate of pay throughout the calendar year, unrelated to the income produced by the annual gaming event; and
 - (c) The employee does not operate any game of chance at any function conducted by the organization but confines his or her services in connection with the annual gaming event to assisting the organization's other employees with the overall planning and organization of the event with supervision of the supporting services for the event.

Authority: T.C.A. §§ 3-17-103(a)(5)(A)(i)(a)-(b), and 3-17-103(a)(5)(B)(i); T.C.A. § 3-17-104(a)(20)-(21); T.C.A. § 3-17-115(a); T.C.A. §§ 39-17-602-603.

PROPOSED RULES

1360-3-3-.11 CRIMINAL BACKGROUND CHECKS.

- (1) Effective Date. Beginning July 1, 2005, criminal background checks conducted by the TBI may be required by the Secretary.
- (2) Persons Subject to Criminal Background Checks. Fingerprint-based criminal background checks may be required of officers, directors, trustees, staff and any person operating an annual event on behalf of a 501(c)(3) organization. Persons who do not receive any compensation for their duties associated with the 501(c)(3) organization shall not be subject to criminal background checks.
- (3) Criteria for requiring Criminal Background Checks. Upon a determination by the Secretary that a criminal background check is required of a person in connection with an annual gaming event held by a 501 (c) (3) organization, the application of such organization shall not be considered until such background check has been completed and the results of the background check are received in the office of the Secretary of state. In the event that information is revealed in the background check which would be a violation of a provision of the Act, the Secretary shall give notice to the affected organization and allow them an opportunity to cure the disqualifying situation by disassociating such person or persons from taking any action on behalf of such organization. The organization shall submit to the Secretary, an affidavit, signed by the chief operating officer and the treasurer of the organization, setting forth what action has been undertaken by the organization to disassociate the individual/ individuals.
- (4) Procedure for Obtaining Criminal Background Checks. Upon notification by the Secretary that a criminal background check is required, the person notified shall take immediate steps to secure the background check. Persons who receive a request from the Secretary to submit to a criminal background check shall contact the then current state of Tennessee fingerprinting service to obtain information on the proper location and procedure for having the background check run. The current vendor for the state of Tennessee is Sylvan Identix Fingerprinting Centers. The toll free number is 1-866-226-2937. Persons must provide identifying information, the reason for being printed and name of the "Division of Charitable Solicitations, Charitable Gaming Section" as the entity for whom the prints are requested. Background checks will include data from a dual TBI & FBI search. At the time of the printing, the person must provide identification to verify his/her identity. A driver's license, passport, military ID or similar identification should be provided. The applicant shall be responsible for paying all costs associated with obtaining a criminal history background check.

The results of the background search will be provided directly to the Secretary of State's Division of Charitable Solicitations, Charitable Gaming Section. Results of background checks may be challenged by contacting the TBI. A form is available for download from the TBI web site at www.tbi.state.tn.us or by contacting the TBI directly.

- (5) Information from Law Enforcement Agency. The Secretary may require a criminal background check on any person based upon information received from a local, state or federal law enforcement agency indicating a violation of the law involving theft, misappropriation of funds, or any matter which would impact the legitimate operation of an annual gaming event. For purposes of this provision, law enforcement agency shall include the Internal Revenue Service.

PROPOSED RULES

- (6) Denial of Application to Conduct Annual Gaming Event. The Secretary may deny an application to operate an annual gaming event based upon the results of a criminal background check. In addition, the Secretary may impose a civil penalty if the background check shows a violation of the Charitable Gaming Implementation Law.

Penalties shall be determined based upon the rules for disqualification located below at section 1360-3-2-.14.

Authority: T.C.A. § 3-17-114(a)-(c), (e)(1)(2); T.C.A. § 3-17-115(a).

1360-3-3-.12 ACCOUNTING PROCEDURES.

- (1) Records:
- (a) Record Keeping. Accurate records shall be kept by each authorized organization in a manner which shows in detail the amount and source of gross receipts, the expenses incurred and the name and address of each person receiving a prize over fifty (\$50.00) dollars and the value of the prize. Prize information shall be reported on the Acknowledgement of Prize Winner form (SOS Form SS 3037).
 - (b) Access to Records. The Secretary of State, the Attorney General and Reporter and the Tennessee Bureau of Investigation or their authorized agents or representatives shall at all times have access to all books and records of any authorized organization for the purpose of examining and checking them.
 - (c) Period of Retention of Records. All records, books of account, bank statements and all other papers related to the operation of an annual gaming event shall be retained and available for inspection by the Secretary of State and the Tennessee Bureau of Investigation or their authorized agents or representatives for a period of at least five (5) years after the date of the annual gaming event to which they relate.
 - (d) Bank Accounts. Gaming proceeds are restricted funds in accordance with generally accepted accounting principles. All receipts less the amount awarded as cash prizes and proceeds from the sale of tickets, shares, chances, or similar records from the annual gaming event shall be deposited no later than the next business day. All prizes, whether paid by cash or check, shall be paid from this account. Money shall be withdrawn from this special account for only the following purposes:
 - 1. Payment of allowable expenses; and
 - 2. Disbursement from Net Proceeds for a lawful charitable purpose;
 - (e) Payment of Allowable Expenses. Money for reasonable and necessary expenses may be paid from gross receipts only by checks having preprinted consecutive numbers drawn on the organization's account. Said checks must be made payable to the specific person providing the goods or rendering the service which gives rise to the expense item and at no time may checks be payable to "cash" or "bearer".

PROPOSED RULES

- (f) Prizes, Donated Prizes, Goods, or Services. The organization shall disclose the fair market value of all prizes, goods and services as revenue (cash or in-kind) on the Financial Accounting form (SOS Form SS-6066).

Authority: *T.C.A. § 3-17-103(a)(5)(B)(i); T.C.A. §§ 3-17-106(a),(b)(1)-(4), (c)(1)-(4); T.C.A. § 3-17-108(a)(1)-(2); T.C.A. § 3-17-115(a).*

1360-3-3-.13 PROOF THAT NET EVENT PROCEEDS WERE USED FOR CHARITABLE PURPOSE.

- (1) Statement of Charitable Purpose Required. An organization applying to hold an annual gaming event must state its charitable purpose. An organization's charitable purpose shall not conflict with the purpose approved by the Internal Revenue Service in response to the organization's application for recognition of exempt status. An organization may use a copy of its IRS form 1023 application, Part II. Activities and Operational Information to prove its charitable purpose. A tax exempt charitable organization which was created prior to October 9, 1969 may submit a copy of documents listed in 1360-3-2-.04(1) above.
- (2) Expenditures for Charitable Purpose. The Charitable Gaming Section will look first to the Charitable Gaming Financial Accounting Report form (SOS Form SS-6066) to determine what expenditures the organization considered as being used for its charitable purpose.
- (3) Proof. Documentation may include:
 - (a) Cancelled checks which state the purpose of the payment and which are endorsed by and identify the payee shall be one form of acceptable documentation;
 - (b) Signed and attested board minutes.
 - (c) A copy of the organization's balance sheets and monthly statements should be provided to substantiate that funds have been earmarked.

Authority: *T.C.A. § 3-17-104(a)(19); T.C.A. § 3-17-106(c)(2); T.C.A. § 3-17-115(a).*

1360-3-3-.14 DISQUALIFICATIONS/CIVIL PENALTIES.

- (1) Any violation of the Tennessee Charitable Gaming Implementation Law shall be a basis for disqualification or the imposition of civil penalties. Civil penalties may be assessed for the violation of either civil or criminal provisions of the Act.
- (2) An organization that loses its tax exempt status shall be ineligible to hold an annual gaming event. The years for which the tax exempt status was not in effect shall not be countable as part of the period of active and continuous operation. If the Internal Revenue Service revokes an organization's tax exempt status and the revocation is made retroactive, the period of retroactivity will not be countable as part of the period of active and continuous operation.
- (3) Organizations which are tax exempt under a provision of the Internal Revenue Code other than section (501)(c)(3) are not eligible to conduct annual gaming events.

PROPOSED RULES

- (4) A period of disqualification shall run from the date of application, the date of discovery of the violation or the date of imposition of the disqualification, whichever is later.

Authority: T.C.A. § 3-17-111(a)-(b); T.C.A. § 3-17-113(a); T.C.A. § 3-17-115(a).

1360-3-3-.15 CO-OPERATION WITH OTHER STATE AGENCIES.

- (1) All information submitted to the Division of Charitable Solicitations, Charitable Gaming Section shall be available to federal, state or local agencies for the purpose of assisting in carrying out the provisions of T.C.A. 3-17-102 et. seq. and T.C.A. 39-16-702 and T.C.A. 39-16-703 and T.C.A. title 39, chapter 17 Parts 5 and 6, T.C.A. § 39-17-502(b), T.C.A. § 39-17-505, T.C.A. § 39-17-506(a), T.C.A. § 39-17-601, T.C.A. § 39-17-651 et. seq. and Title 3, Chapter 15, or any provision of federal law.
- (2) The Secretary shall assist and co-operate with the Tennessee Bureau of Investigation and/or the Internal Revenue Service in the conduct of any investigation.

Authority: T.C.A. § 3-17-113(a)-(b); T.C.A. § 3-17-115(a).

The proposed rules set out herein were properly filed in the Department of State on the 7th day of October, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of February, 2006. (10-08)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

FOR TEXT OF PUBLIC NECESSITY RULE, SEE T.A.R.

- 0400 - Department of Environment and Conservation - Petroleum Underground Storage Tank Division
- Public Necessity rules dealing with incentives for tank owners, Chapter 1200-1-15 Underground
Storage Tank Program, 9 T.A.R. (September 2005) Filed August 29, 2005; effective through February
10, 2006, (08-57)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning
TennCare Demonstration Project, chapter 1200-13-1 General Rules, 8 T.A.R. (August 2005) - Filed
July 1, 2005; effective through December 13, 2005. (07-03)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concern-
ing TennCare Demonstration Project, chapter 1200-13-1 General Rules, 10 T.A.R. (October 2005)
- Filed September 26, 2005; effective through March 10, 2006. (09-29)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concern-
ing eligibility, chapter 1200-13-13 TennCare Medicaid, 7 T.A.R. (July 2005) - Filed June 3, 2005;
effective through November 15, 2005. (06-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding
appeals, chapter 1200-13-13 TennCare Medicaid, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective
through November 20, 2005. (06-10)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning
TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005)
- Filed July 1, 2005; effective through December 13, 2005. (07-04)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning
TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005)
- Filed July 1, 2005; effective through December 13, 2005. (07-05)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning
TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005)
- Filed July 26, 2005; effective through January 10, 2006. (07-43)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning
TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005)
- Filed July 29, 2005; effective through January 10, 2006. (07-44)

PUBLIC NECESSITY RULES

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 6, 2005; effective through November 20, 2005. (07-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules deleting sections relating to the TennCare Partners State-Only Program, chapter 1200-13-13 TennCare Medicaid, 9 T.A.R. (September 2005) - Filed August 18, 2005; effective through January 30, 2006. (08-33)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning changes resulting from the amendment of the TennCare waiver, chapter 1200-13-13 TennCare Medicaid, 10 T.A.R. (October 2005) - Filed September 7, 2005; effective through February 19, 2006. (09-12)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-07)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2006. (07-45)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2006. (07-46)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 6, 2005; effective through November 20, 2005. (07-08)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility and enrollment, chapter 1200-13-14 TennCare Standard, 7 T.A.R. (June 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-07)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility and appeals, chapter 1200-13-14 TennCare Standard, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-11)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Partners State-Only Program, chapter 1200-13-14 TennCare Standard, 9 T.A.R. (September 2005) - Filed August 18, 2005; effective through January 30, 2006. (08-34)
- 0780 - Department of COMmerce and Insurance - Division of Insurance - Public necessity rules concerning MMA and state Medigap, chapter 0780 Medicare Supplement Insurance Minimum Standards, 10 T.A.R. (October 2005) - Filed September 1, 2005; effective through February 13, 2006. (09-03)

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- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding Medical Cost Containment Program, chapter 0800-2-17 Medical Cost Containment Program, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-14)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding, chapter 0800-2-18 Medical Fee Schedule, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-15)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding In-patient fees, chapter 0800-2-19 In-Patient Hospital Fee Schedule, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-16)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding medical impairment rating, chapter 0800-2-20 Medical Impairment Rating Registry Program, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-20)
- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules required in order to maintain compliance with federal requirements, chapter 1240-2-2 Forms for Income Assignments, 6 T.A.R. (June 2005) - Filed May 20, 2005; effective through November 1, 2005. (05-20)
- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules dealing with Child support obligations, 1240-2-2 Forms for Income Assignments, 6 T.A.R. (June 2005) - Filed May 20, 2005; effective through November 1, 2005. (05-21)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity Rules concerning standard of need/income, chapter 1240-1-50 Financial Eligibility Requirements Family First Program, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-01)
- 1240 - Department of Human Services - Medical Services Division - Public Necessity Rules promulgated to avoid loss of federal funds, chapter 1240-3-3 Technical and Financial Eligibility Requirements for Medicaid, 10 T.A.R. (October 2005) - Filed September 30, 2005; effective through March 14, 2006. (09-41)
- 1540 - TN Higher Education Commission - Public Necessity Rules concerning tuition and fee waiver, chapter 1540-1-4 Public Higher Education Fee Waivers for State Employees, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-02)
- 1540 - TN Higher Education Commission - Public Necessity Rules concerning tuition and fee waiver, chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-04)
- 1540 - TN Higher Education Commission - Public Necessity Rules adding eligible employees, chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees, 10 T.A.R. (October 2005) - Filed September 1, 2005; effective through February 13, 2006. (09-01)

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TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-19

TENNESSEE EDUCATIONAL LOTTERY SCHOLARSHIP PROGRAM

REVISED RULES

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1640-1-19-.01 DEFINITIONS

- (1) Academic Year: Three consecutive semesters that begins with the fall semester and ends with the summer semester.
- (2) ACT: The ACT Assessment administered by ACT, Inc., exclusive of the essay and optional subject area battery tests.
- (3) Adjusted Gross Income Attributable to the Student or Student's Adjusted Gross Income:
 - (a) The adjusted gross income of the student's parent or parents as reported on the student's Free Application for Federal Student Aid (FAFSA) and used by the Corporation in determinations of eligibility for federal or state financial aid, if the student is a dependent of a parent or parents as defined by FAFSA; or

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- (b) The adjusted gross income of the student and, if applicable, the student's spouse as reported on the student's FAFSA and used by the Corporation in determinations of eligibility for federal or state financial aid, if the student is independent of parents as defined by FAFSA.
- (4) Alternative Study Program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships, that includes travel outside the State of Tennessee that is sponsored or offered by:
 - (a) an eligible postsecondary institution; or
 - (b) an eligible postsecondary institution in conjunction with either another eligible postsecondary institution or a postsecondary institution that is accredited by a regional accrediting association.
- (5) ASPIRE Award: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE scholarship and whose adjusted gross income attributable to the student does not exceed thirty-six thousand dollars (\$36,000).
- (6) Award Year: Three consecutive semesters that begins with the fall semester and ends with the summer semester.
- (7) Board of Regents: The Board of Regents of the State University and Community College System of Tennessee.
- (8) Certificate or Diploma: A credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by a Tennessee Technology Center operated by the Board of Regents.
- (9) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.
- (10) Continuous Enrollment: A student is enrolled in the fall and spring semesters of a single academic year. Enrollment in summer semester or inter-session terms is not required.
- (11) Corporation: Tennessee Student Assistance Corporation.
- (12) Cost of Attendance: The expenses, both direct and indirect, incurred by a student and the student's family to finance the cost of receiving a postsecondary education as determined in accordance with the standards and practices used for Title IV programs by the institution at which the student is enrolled.
- (13) Credit Hours Attempted: The number of semester hours for which a degree-seeking or diploma/certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-1-19-.22.
- (14) Degree: A two-year associate degree or four-year bachelor's degree conferred on students by a postsecondary educational institution upon completion of a unified program of study at the undergraduate level.

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- (15) Distance Learning: An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.
- (16) Dual Enrollment: An arrangement between a high school and a postsecondary institution wherein a high school student enrolls in postsecondary classes and earns units of credit that count toward high school graduation requirements and hours or units of postsecondary credit.
- (17) Eligible High School:
 - (a) Tennessee public secondary school; or
 - (b) Any private secondary school that is located in Tennessee and:
 - 1. is approved by the State Board of Education as a category 1, 2, or 3 secondary school; or
 - 2. is a candidate for full accreditation status by an accrediting agency approved by the State Board of Education by June 8, 2004 for the purpose of application for Tennessee Hope scholarships for the 2004-05 academic year by students who graduated after January 1, 2003 and prior to December 1, 2004.
 - (c) A secondary school operated by the United State Department of Defense on a military base that is located in whole or in part in Tennessee;
 - (d) An out-of-state public secondary school located in a county bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. § 49-6-3108; or
 - (e) An out-of-state boarding school accredited by a regional accrediting association that is attended by a bona fide Tennessee resident.
- (18) Eligible Postsecondary Institution: An eligible independent postsecondary institution or an eligible public postsecondary institution.
- (19) Eligible Independent Postsecondary Institution:
 - (a) An institution created by testamentary trust for which the state acts by statute as trustee and for which the governor is authorized to appoint commissioners with the advice and consent of the senate and that offers courses leading to undergraduate degrees; or
 - (b) A Southern Association of Colleges and Schools accredited private postsecondary institution whose main campus is located in Tennessee; or
 - (c) A private, four-year postsecondary institution that:
 - 1. Has been chartered in Tennessee as a not-for-profit entity for at least thirty (30) consecutive years;
 - 2. Has had its primary campus domiciled in Tennessee for at least thirty (30) consecutive years;

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3. Is accredited by an accrediting agency that is recognized by the United States Department of Education and the Council on Higher Education Accreditation;
 4. Awards associate or baccalaureate degrees; and
 5. As of May 1, 2005, has an articulation agreement with an institution of the state university and community college system or the University of Tennessee system.
- (20) Eligible Public Postsecondary Institution:
- (a) An institution operated by the Board of Regents; or
 - (b) An institution in the University of Tennessee system.
- (21) Entering Freshman: A student entering a postsecondary institution who has not attempted any semester hours at any postsecondary institution after graduating from high school, completing high school in a home school program, or obtaining a GED.
- (22) FAFSA: Free Application for Federal Student Aid or the Renewal FAFSA as authorized by the U. S. Department of Education to indicate eligibility for federal and state financial aid programs.
- (23) Foster Child: A child who was in the custody of the Tennessee Department of Children's Services:
- (a) For at least one (1) year after reaching fourteen (14) years of age;
 - (b) For at least one (1) year after reaching fourteen (14) years of age and placed for adoption by the Department of Children's Services or one of its adoption contract agencies and the adoption was finalized; or
 - (c) For at least one (1) year and placed in permanent guardianship by the Department of Children's Services after reaching fourteen (14) years of age.
- (24) Full-Time Student: A student attending a postsecondary educational institution and enrolled for at least twelve (12) semester hours during a semester of attendance.
- (25) General Assembly Merit Scholarship: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution awarded for academic excellence to supplement the Tennessee HOPE scholarship.
- (26) GED: A general educational development credential awarded by a state-approved institution or organization.
- (27) Grade Point Average: The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.
- (28) Home School Student: A student who completed high school in a Tennessee home school program meeting the requirements of §49-6-3050. For two (2) years immediately preceding completion of high school as a home school student, such student shall have been a student in a home school associated with a church-related school as defined by §49-50-801 and registered with the Tennessee local school district which the student would otherwise attend as required by §49-6-3050(a)(2)(C)(i) or an independent home school student whose parent or guardian has given notice to the local director of a Tennessee school district under § 49-6-3050(b)(1) of intent to conduct a home school.

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- (29) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.
- (30) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.
- (31) Immediate Family Member: Spouse, parents, children or siblings.
- (32) Incarcerated: Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.
- (33) Joint Enrollment: An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.
- (34) Junior: A student who has attempted at least forty-eight (48) semester hours, but less than seventy-two (72) semester hours.
- (35) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.
- (36) Non-Traditional student: A student who is at least twenty-five (25) years of age as of the first day of class upon enrolling in an eligible postsecondary institution as an entering freshman.
- (37) Parent: A parent or guardian.
- (38) Part-time Student: A student attending a postsecondary educational institution and enrolled for at least six (6) semester hours, but less than twelve (12) semester hours, during a semester of attendance.
- (39) Regional Accrediting Association: Approved accrediting agencies are as follows:
 - (a) The Southern Association of Colleges and Schools;
 - (b) The New England Association of Schools and Colleges;
 - (c) The Middle States Association of Colleges and Schools;
 - (d) The North Central Association of Colleges and Schools;
 - (e) The Northwestern Association of Schools and Colleges; and
 - (f) The Western Association of Schools and Colleges.
- (40) SAT: The SAT I administered by the College Board., exclusive of the essay and optional subject area battery tests.
- (41) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution at which the student is currently enrolled.
- (42) Semester: Fall, spring, or summer semester at a postsecondary institution, if the institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.

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- (43) **Semester Hour:** The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. Semester hour includes each semester hour attempted, whether remedial, developmental or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED.
- (44) **Study Abroad Program:** Programs of study for which college credit is earned that include travel outside the United States.
- (45) **TELS (Tennessee Education Lottery Scholarship) Award:** Any scholarship and/or grant provided for by these rules that a student is eligible to receive, excluding the Tennessee Dual Enrollment Grant.
- (46) **Tennessee Dual Enrollment Grant:** A grant for study at an eligible postsecondary institution that is funded from net proceeds of the state lottery and awarded to students who are attending high school and who are also enrolled in courses at eligible postsecondary institutions that count toward high school graduation requirements and hours or units of postsecondary credit.
- (47) **Tennessee HOPE Access Grant:** A grant to freshman students for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is one-half the amount of a Tennessee HOPE Scholarship and the need based supplemental award, which is funded from net proceeds of the state lottery.
- (48) **Tennessee HOPE Foster Child Tuition Grant:** A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible public postsecondary institution the student attends.
- (49) **Tennessee HOPE Scholarship:** A scholarship for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is funded from net proceeds of the state lottery.
- (50) **Test Date:** Date designated by the ACT, Inc., or the College Board for administration of the ACT or SAT at national test centers designated by the respective testing entities. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship.
- (51) **Title IV:** Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C.A. § 1070, et seq.
- (52) **Transient Student:** A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which he or she was previously enrolled.
- (53) **Undergraduate Student:** A student attending an eligible postsecondary institution and enrolled in a program leading to a diploma/certificate, an associate degree, or a bachelor's degree.
- (54) **Unweighted Grade Point Average:** Grade point average on a 4.0 scale calculated without additional points awarded for advanced placement, honors, or other similar courses.
- (55) **Weighted Grade Point Average:** Grade point average on a 4.0 scale calculated with additional quality points added to the unweighted grade point average for advanced placement, honors, and dual enrollment courses as those courses are defined by the high school. The corporation

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shall calculate the weighted grade point average by adding 0.5 quality point to the grade of any honors or dual-enrollment course and by adding 1.0 quality point to the grade of any advanced placement, international baccalaureate or advance honors course.

- (56) Wilder-Naifeh Technical Skills Grant: A grant for study in pursuit of a certificate or diploma at a Tennessee Technology Center operated by the Tennessee Board of Regents that is funded from net proceeds of the state lottery.

Authority: *T.C.A. §§ 49-4-902, 49-4-924, and Public Chapter 481, Acts of 2005.*

1640-1-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS

- (1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.
- (2) Award levels for a full-time student in the 2005-2006 academic year are as follows:
 - (a) Tennessee HOPE Scholarship:
 - 1. One thousand six hundred fifty dollars (\$1,650) per semester, maximum three thousand three hundred dollars (\$3,300) at four year institutions; and
 - 2. Eight hundred twenty-five dollars (\$825) per semester, maximum one thousand six hundred fifty dollars (\$1,650) at two year institutions.
 - (b) Tennessee ASPIRE Award:
 - 1. Seven hundred fifty dollars (\$750) supplement to base award per semester, maximum one thousand five hundred dollars (\$1,500).
 - (c) General Assembly Merit Scholarship:
 - 1. Five hundred dollars (\$500) supplement to base award per semester, maximum one thousand dollars (\$1,000).
 - (a) Tennessee HOPE Access Grant (one half each of the Tennessee HOPE scholarship and ASPIRE award):
 - 1. One thousand two hundred dollars (\$1,200) per semester, maximum two thousand four hundred dollars (\$2,400) at four year institutions; and
 - 2. Seven hundred eighty-eight dollars (\$788) per semester, maximum one thousand five hundred seventy-five dollars (\$1,575) at two year institutions.
 - (e) Wilder-Naifeh Technical Skills Grant:
 - 1. One thousand three hundred dollars (\$1,300) maximum at Tennessee Technology Centers.
 - (f) Tennessee Dual Enrollment Grant:

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1. One hundred dollars (\$100) per semester hour (or equivalent contact hours at technology centers) for a maximum award of three hundred dollars (\$300) per semester and six hundred dollars \$600 per academic year.
- (3) Award amounts for subsequent years shall be determined in accordance with §4-51-111 and shall be set in the general appropriations act.
- (4) Recipients of any TELS award as provided by these rules may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.
- (5) Except for approved medical or personal leaves of absence as provided in Rule 1640-1-19-.20 or emergency military duty as provided in Rule 1640-1-19-.21, award recipients must be continuously enrolled in an eligible postsecondary institution.
- (6) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, the Corporation shall determine the appropriate manner in which the various awards shall be reduced.
- (7) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student's total aid package.
- (8) The receipt of a Tennessee HOPE scholarship, Tennessee HOPE Access grant, Tennessee ASPIRE award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Tennessee Dual Enrollment grant is contingent upon admission to an eligible postsecondary institution. Academically qualifying for any of these awards program does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, and Public Chapter 481, Acts of 2005.

1640-1-19-.03 APPLICATION PROCESS

- (1) The FAFSA shall be the application for all first year TELS awards and the FAFSA, or Renewal FAFSA, shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the adjusted gross income attributable to the student, he or she is required to complete the FAFSA for each academic year in order to apply for and receive a TELS award.
- (2) Students must have a FAFSA filed with and processed by the U. S. Department of Education on or before September 1 for fall enrollment and February 1 for spring and summer enrollment in determining awards for that academic year. Students enrolling in a Tennessee Technology Center shall have a FAFSA filed and processed by the U. S. Department of Education on or before the seventh day following the beginning of the respective trimester. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is processed by the above deadlines.

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- (3) Students shall apply for the Tennessee Dual Enrollment during their junior and senior years prior to high school graduation by submitting the Dual Enrollment Grant Fee Waiver Application to the postsecondary institution to which the student is seeking admission. The student must renew the Dual Enrollment Grant application each postsecondary academic term.
 - (a) The application deadline shall be set by the high school and postsecondary institution participating in the Dual Enrollment Grant program, but shall be no later than the eligible postsecondary institution's census date for that semester.

Authority: T.C.A. § 49-4-924 and Public Chapter 481, Acts of 2005.

1640-1-19-.04 GENERAL ELIGIBILITY

- (1) To be eligible for a TELS award a student shall:
 - (a) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of September 1 of the academic year of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment;
 - (b) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-1-19-.03;
 - (c) Be admitted to an eligible postsecondary institution;
 - (d) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;
 - (e) Be in compliance with federal drug-free rules and laws for receiving financial assistance;
 - (f) Meet each qualification relating to the relevant TELS award and applicable to the student;
 - (g) Not be in default on a federal Title IV educational loan or Tennessee educational loan;
 - (h) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
 - (i) Not be incarcerated.

Authority: T.C.A. §§ 49-4-904, 49-4-905, and 49-4-924.

1640-1-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP

- (1) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship as an entering freshman, students graduating from an eligible high school, graduating from another high school located in Tennessee, completing of a Tennessee home school program, obtaining a GED, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements after December 1, 2004, shall, no later

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- than 16 months following completion of the respective high school requirements be required to:
- (a) Apply for a Tennessee HOPE scholarship as provided by Rule 1640-1-19-.03 and enroll in an eligible postsecondary institution; and
 - 1. Achieve a final overall unweighted high school grade point average of at least 3.0;
 - 2. Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution; or
 - 3. Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a post secondary institution.
 - (2) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship as an entering freshman, students graduating from an eligible high school after December 1, 2003, but prior to December 1, 2004, must also meet the applicable additional requirements outlined below:
 - (a) Apply for a Tennessee HOPE scholarship as provided in Rule 1640-1-19-.03 and enroll in an eligible postsecondary institution; and
 - 1. Achieve a final overall unweighted high school grade point average of at least 3.0; or-
 - 2. Attain a composite ACT score of at least 19 on any single ACT test date, or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a post secondary institution.
 - (3) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship as an entering freshman, students completing a Tennessee home school program, obtaining a GED, graduating from a Tennessee high school that is not an eligible high school or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements after December 1, 2003, but prior to December 1, 2004, shall, no later than 16 months following the completion of the home school program, graduation, or the last class taken toward high school requirements shall be required to:
 - (a) Apply for a Tennessee HOPE scholarship as provided in Rule 1640-1-19-.03 and enroll in an eligible postsecondary institution; and
 - 2. Attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a post secondary institution, if such student completed high school in a Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or
 - 3. Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 19 on any single ACT test date, or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a post secondary institution.

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- (4) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship, students completing high school requirements after January 1, 2003, but prior to December 1, 2003, must also meet the applicable additional requirements outlined below:
- (a) Students graduating from an eligible high school shall, no later than the fall semester immediately following graduation, be required to:
 - 1. Apply for a Tennessee HOPE scholarship as provided by Rule 1640-1-19-.03 and enroll in an eligible postsecondary institution; and
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
 - (b) Students completing high school in a Tennessee home school program, or graduating from a high school located in Tennessee that is not an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements shall, no later than the fall semester immediately following graduation, completion of the home school program, or the last class taken toward high school requirements shall be required to:
 - 1. Apply for a Tennessee HOPE scholarship as provided by Rule 1640-1-19-.03 and enroll in an eligible postsecondary institution; and
 - (i) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution.
 - (c) Student obtaining a GED shall pass the GED tests with an average score of at least 525 and shall, no later than the fall semester immediately following obtaining a GED, be required to :
 - 1. Apply for a Tennessee HOPE scholarship as provided by Rule 1640-1-19-.03 and enrolling in an eligible postsecondary institution; and
 - (i) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
 - (d) All students meeting the requirements of subparagraph (4)(a), (b), or (c) of this rule, shall also meet each of the following criteria:
 - 1. Attend an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year without a Tennessee HOPE scholarship and complete at least twenty-four (24) semester hours at such institution with a cumulative grade point average of 2.75; and

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2. Maintain satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the postsecondary institution in which the student enrolled.
- (5) Students entering active duty in the United States Armed Services within two years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED, and otherwise meets the criteria outlined in this rule may apply for a TELS award if the student:
- (A) Applies within seven years of the student's date of entry into military service, or within one year of the student's honorable discharge from military service, whichever comes first; and
 - (b) After graduation from high school, did not attend a postsecondary institution prior to entering military service.
- (6) Students who are a Tennessee citizen and a dependent child of a member of the U. S. armed forces or the Tennessee National Guard whose home of record is Tennessee and who is engaged in active military service, or Department of Defense employee shall be eligible for a Tennessee Hope Scholarship as an entering freshman, if such students meet all eligibility requirements except that the students;
- (a) Did not reside in Tennessee for one (1) year immediately preceding the date of application for the Tennessee HOPE scholarship; and
 - (b) Are a natural, adoptive, or stepchild, under 21, and claimed as a dependent on the federal income tax return of military parent; and
 - (c) Did not graduate from an eligible high school as defined in 1640-1-19-.01(17), an ineligible high school, home school, or obtain a GED; and
 - (d) Graduated from a high school located outside Tennessee. Such high school shall be considered eligible if the school was;
 1. Operated by the United States; or
 2. Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 3. Accredited by an accrediting association recognized by the foreign nation in which the school is located.
- (7) Beginning with the Fall 2005 semester a non-traditional student who is an entering freshman, as those terms are defined in these rules, may become eligible for a Tennessee HOPE scholarship. In addition to the general eligibility requirements of Rule 1640-1-19-.04, the non-traditional student must have an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000) and attend an eligible postsecondary institution as a full- or part-time student, as those terms are defined in these rules, and attempt at least twenty-four (24) semester hours. If the student achieves a 2.75 grade point average at the end of the semester in which twenty-four (24) hours are attempted, the student shall be eligible for a Tennessee HOPE scholarship in subsequent semesters if the following additional requirements are met:

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- (a) Applies for the Tennessee HOPE scholarship as provided in Rule 1649-1-19-.03;
 - (b) Has an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000);
 - (c) Is continuously enrolled in an eligible postsecondary institution as a full- or part-time student, as those terms are defined in these rules;
 - (d) Meets the applicable retention requirements of Rule 1640-1-19-.12; and
 - (e) Maintains satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs at the postsecondary institution attended.
- (8) A non-traditional student who does not meet the grade point average requirement of paragraph (7) of this rule, shall be eligible for a Tennessee HOPE scholarship if the student achieves a cumulative grade point average of at least 3.0 at the end of any semester in which eligibility is reviewed under Rule 1640-1-19-.12, provided the student continues to meet the provisions of paragraph (7)(a), (b), (c), and (e) of this rule.
- (9) A non-traditional student shall not be eligible for either the ASPIRE award or the General Assembly Merit Scholarship award.

Authority: T.C.A. §§ 49-4-905, 49-4-907, 49-4-908, 49-4-909, 49-4-910, 49-4-918, 49-4-924, and Public Chapter 481, Acts of 2005.

1640-1-19-.06 ELIGIBILITY – TENNESSEE ASPIRE AWARD

Except as provided in 1640-1-19-.05(9), any student eligible for the Tennessee HOPE scholarship with an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000) will receive ASPIRE award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE award. Notwithstanding the provisions of Rule 1640-1-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE scholarship and meeting the requirements of this rule shall receive the ASPIRE award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously receive both awards.

Authority: T.C.A. §§ 49-4-915, 49-4-917, 49-4-924, and Public Chapter 481, Acts of 2005.

1640-1-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP

- (1) Any student eligible for the Tennessee HOPE scholarship and enrolled in a program leading to an associate or baccalaureate degree will also receive a General Assembly Merit Scholarship if the following criteria are met:
 - (a) Students graduating from an eligible high school after December 1, 2003, shall:
 - 1. Apply for the General Assembly Merit scholarship as provided in Rule 1640-1-19-.03;

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2. Attain a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date taken prior to enrolling in a postsecondary institution; and
 3. Achieve a final overall weighted high school grade point average of at least 3.75;
- (b) Students completing high school in a Tennessee home school program after December 1, 2003, or graduating from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall:
1. Attain a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date taken prior to enrolling in a postsecondary institution;
 2. During the course of a home school program or while attending high school, enroll in at least four (4) courses totaling at least twelve (12) semester hours at an eligible postsecondary institution. Such courses shall meet or be equivalent to courses meeting the minimum degree requirements of the Board of Regents, other than the minimum degree requirements pertaining to physical education; and
 3. Achieve a cumulative grade point average of at least 3.0 for all courses attempted at any eligible postsecondary institution during the course of a home school program or while attending high school.
- (c) Students graduating from an eligible high school after January 1, 2003, but prior to December 1, 2003, and seeking an associate or baccalaureate degree shall have:
1. Achieved a final overall unweighted high school grade point average of at least 3.75; and
 2. Attained a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date;
 3. Enrolled in either an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year and attempt at least twenty-four (24) semester hours at such institution with a cumulative grade point average of 2.75;
 4. Maintained satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible postsecondary institution in which the student enrolled; and
- (2) Students eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously be awarded both.
- (3) Failure to retain the General Assembly Merit Scholarship for any reason shall result in the permanent loss of the award. Additionally, if a student loses the General Assembly Merit Scholarship for any reason other than failure to maintain the required cumulative grade point average, then the student shall not be able to regain either the Tennessee HOPE scholarship or the General Assembly Merit Scholarship.

Authority: T.C.A. §§ 49-4-916, 49-4-917, 49-4-924, and Public Chapter 481, Acts of 2005.

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1640-1-10-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE access grant a student shall:
 - (a) Have an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000);
 - (b) Apply for a Tennessee HOPE access grant as provided in Rule 1640-1-19-.03;
 - (c) Graduate from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation;
 - (d) Achieve a final overall unweighted high school grade point average of at least 2.75; and
 - (e) Attain a composite ACT score of at least 18 on any single ACT test date or a combined SAT score of at least 860 on any single SAT test date taken prior to enrolling in a postsecondary institution.

Authority: §§ 49-4-920 and 49-4-924.

1640-1-10-.09 ELIGIBILITY – TENNESSEE HOPE FOSTER CHILD GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04 and the applicable requirements of Rule 1640-1-19-.05(1), to be eligible for a Tennessee HOPE Foster Child Grant, a student shall present the Corporation with official certification from the Department of Children's Services that the student meets the eligibility requirement for the tuition grant.
- (2) The Tennessee HOPE foster child tuition grant shall be awarded in addition to any other TELS award that a student is eligible to receive. The Tennessee HOPE foster child tuition grant shall be applied only toward the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible public postsecondary institution the student attends.
- (3) Any student eligible for the Tennessee HOPE foster child tuition grant shall apply for all available financial aid, including, but not limited to, the Tennessee HOPE scholarship or Tennessee HOPE access grant, if eligible, and funds provided through the Federal Foster Care Independence Act of 1999, if applicable. Any of the additional sources of financial aid for which the student is eligible shall first be applied to the student's room and board, which shall not exceed the maximum cost of room and board provided through the facilities of the eligible public postsecondary institution that the student is attending, then to additional items making up the institution's cost of attendance not covered by the Tennessee HOPE foster child tuition grant.
- (4) Subject to meeting retention standards provided by these rules for a TELS award, the student shall be eligible for the Tennessee HOPE foster child tuition grant:
 - (a) For a period of no more than four (4) years after the date of graduation from high school or equivalent; and
 - (b) For a period of six (6) years after admittance to an eligible public postsecondary institution, if, except as provided by Rule 1640-1-19-.20 or 1640-1-19-.21, the student maintains satisfactory progress in a course of study in accordance with the standards and practices

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used for Title IV programs by the postsecondary institution in which the student is currently enrolled.

- (5) Nothing in these rules shall be construed to limit the participation of a youth in or formerly in the custody of the state in any other program of financial assistance for postsecondary education.

Authority: *Public Chapter 481, Acts of 2005.*

1640-1-19-.10 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Wilder-Naifeh technical skills grant a student seeking a diploma or certificate at a Tennessee Technology Center operated by the Board of Regents shall:
 - (a) Be admitted to the institution in a program of study leading to a certificate or diploma; and
 - (b) Have not, at any time, been the recipient of a Tennessee HOPE scholarship or completed a certificate or diploma with a Wilder-Naifeh Technical Skills Grant.
- (2) No minimum number of hours of enrollment is required for eligibility for a Wilder-Naifeh technical skills grant.
- (3) An eligible student may receive a Wilder-Naifeh technical skills grant for all course work required by the institution for a program of study leading to a certificate or diploma. Wilder-Naifeh technical skills grants may not be used for continuing education courses.

Authority: *T.C.A. §§ 49-4-921 and 49-4-924.*

1640-1-19-.11 ELIGIBILITY – TENNESSEE DUAL ENROLLMENT GRANT

- (1) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee Dual Enrollment grant a student shall be enrolled in a Tennessee high school or home school program, admitted to, and concurrently enrolled in, an eligible postsecondary institution and make application to the eligible postsecondary institution on the application form developed by the Corporation.
- (2) The student must have completed all of the academic requirements of the 10th grade (high school sophomore) and be classified as an 11th grader (high school junior) or 12th grader (high school senior) by the student's high school or home school program.
- (3) The student must not have already received a high school diploma or General Education Development (GED) diploma.
- (4) A student's participation in the Tennessee Dual Enrollment Grant program is limited to the remaining amount of time normally required to complete the high school diploma, from the time of initial participation in the program. The grant is available for the regular Fall and Spring semesters, and for Summer semesters prior to graduation from high school for those students who did not exceed the maximum award during the regular school year.

Authority: *Public Chapter 481, Acts of 2005.*

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1640-1-19-.12 RETENTION OF AWARDS – GENERAL REQUIREMENTS

- (1) To retain a TELS award authorized by this chapter, a student at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA pursuant to Rule 1640-1-19-.03 for the applicable award for each academic year.
- (2) Eligibility shall also be reviewed at the end of the semester in which the student has attempted a total of twenty-four (24), forty-eight (48), seventy-two (72), or ninety-six (96) semester hours. At the end of the semester in which the student has attempted a total of twenty-four (24) semester hours, the student shall have achieved a cumulative grade point average of at least 2.75 to continue to receive the TELS award. At the end of the semester in which the student has attempted a total of forty-eight (48), seventy-two (72), or ninety-six (96) semester hours, the student shall achieve a cumulative grade point average of at least 3.0 to continue to receive the TELS award.
- (3) Except as provided in paragraph (4) of this rule and Rules 1640-1-19-.20 and 1640-1-19-.21 which outline appropriate justification for medical and personal leaves of absence, a student may receive a Tennessee HOPE scholarship until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of one hundred twenty (120) semester hours;
 - (c) Five years have passed from the date of the student's initial enrollment at any postsecondary institution.
- (4) The attempted credit hour limitation includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. If a student enters the semester with less than one hundred twenty (120) semester hours attempted and will surpass the one hundred twenty (120) semester hours limit, he or she is eligible for payment for the full number of hours enrolled for that semester. If the student is enrolled in a specific undergraduate degree program that is designed to be more than one hundred twenty (120) semester hours in length, the student is eligible for a total of one hundred thirty-six (136) semester hours attempted, or the number of hours required for graduation, whichever is less. The student shall achieve a cumulative grade point average of 3.0 at the end of the semester in which the student has attempted one hundred twenty (120) semester hours to continue to receive the scholarship. The student is eligible for payment for the full number of hours enrolled in the final semester. Regardless of the number of hours attempted, once the student has earned a bachelor's degree, he or she is ineligible for additional TELS awards.
- (5) A student who meets all other requirements for fourth or fifth year eligibility except that he or she is classified at the professional level rather than as an undergraduate, and has not been awarded a baccalaureate degree, is eligible if he or she was accepted into the professional level program of study that is an extension of the student's bachelor's degree program. Such student is eligible for a total of one hundred thirty-six (136) semester hours, or the number of hours required for the degree, whichever is less.
- (6) If a student ceases to be eligible for any TELS award, except the General Assembly Merit Scholarship, due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24), forty-eight (48), seventy-two (72), ninety-six (96), or one hundred twenty (120) semester hours, the student may regain the applicable award or awards by:

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- (a) Continuing to meet all applicable non-academic requirements for the applicable award or awards,
 - (b) Maintaining continuous enrollment at an eligible postsecondary institution without the applicable award or awards,
 - (c) Achieving a cumulative grade point average of at least 3.0 at the end of any semester in which eligibility would have been reviewed, had the student not lost the award or awards,
 - (d) Reapplying for the scholarship as provided in Rule 1640-1-19-.03.
- (7) The provisions of paragraph (6) of this rule shall also apply to any student who:
- (a) Completed high school requirements after December 1, 2003, who, for whatever reason, did not receive a TELS award, notwithstanding the fact that the student met the applicable initial eligibility requirements of Rule 1640-1-19-.05(1), (2) or (3); or
 - (b) Completed high school requirements after January 1, 2003 and prior to December 1, 2003, who completed at least twenty-four (24) semester hours during the 2003-2004 academic year with a cumulative grade point average under 2.75, but met all other applicable initial eligibility requirements of Rule 1640-1-19-.05(4), and is otherwise eligible for the award.
- (8) No retroactive awards shall be made for semester hours attempted in order to regain the scholarship.
- (9) A student can utilize the option outlined in paragraph (6) of this rule only one time. A student who, after regaining the award or awards pursuant to paragraph (6) of this rule, subsequently fails to retain any TELS award due to failure to achieve the cumulative grade point average at a regular credit hour checkpoint shall not be eligible to regain the TELS award or become eligible for another TELS award.
- (10) Except as provided by Rule 1640-1-19-.20 or 1640-1-19-.21, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.

Authority: T.C.A. §§ 49-4-909, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-9-924, and Public Chapter 481, Acts of 2005.

1640-1-19-.13 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT

- (1) In addition to the general requirements for retention of award in Rule 1640-1-19-.12:
- (a) A Tennessee HOPE access grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of twenty-four (24) semester hours. A student who is eligible for a Tennessee HOPE scholarship shall be ineligible for a Tennessee HOPE access grant.
 - (b) If a student receiving a Tennessee HOPE access grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has

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attempted twenty-four (24) semester hours, the student shall be eligible for a Tennessee HOPE scholarship. The student will also receive the ASPIRE award referenced in Rule 1640-1-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed thirty-six thousand dollars (\$36,000).

- (c) If a student ceases to be eligible due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student may be eligible to regain the HOPE Scholarship by following the procedure outlined in Rule 1640-1-19-.12(6).
- (d) A student may receive a Tennessee HOPE scholarship after having received a Tennessee HOPE access grant until the first of the following events:
 - 1. The student has earned a baccalaureate degree;
 - 2. The student has attempted at any postsecondary institution a total of one hundred twenty (120) semester hours, or if the student is enrolled in an undergraduate degree program required to be more than one hundred twenty (120) semester hours in length, that student is eligible for a total of one hundred thirty-six (136) semester hours attempted, or the number of hours required for graduation, whichever is less; or
 - 3. Five years from the date of the student's initial enrollment at any postsecondary institution have passed.

Authority: T.C.A. §§ 49-4-920, 49-4-924, and Public Chapter 481, Acts of 2005.

1640-1-19-.14 RETENTION OF AWARDS – TENNESSEE DUAL ENROLLMENT GRANT

- (1) To be eligible for a dual enrollment grant for a semester beyond the first semester of receipt, the student shall continue to meet all eligibility requirements for the grant and shall achieve a cumulative grade point average of 2.75 for all postsecondary courses attempted under a dual enrollment grant.
- (2) The dual enrollment cumulative grade point average used to determine eligibility for a renewal of a dual enrollment grant must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all dual enrollment credit hours attempted, except as otherwise provided in this rule.
- (3) Remedial and developmental studies, distance education courses and independent studies courses are eligible for payment with a Tennessee dual enrollment grant and shall be included in the calculation of the postsecondary cumulative grade point average.
- (4) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a dual enrollment grant.
- (5) Students who obtain a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a dual enrollment grant, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the award may be adjusted in the current award year.
- (6) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for award payment for distance learning courses if all other eligibility requirements are met.

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- (7) The grant will pay only for lower division (courses numbered 100-200 or 1000-2000) postsecondary credit for general education courses and courses in the disciplines. The grant will not pay for upper division courses (numbered 300-400 or 3000-4000).

Authority: *Public Chapter 481, Acts of 2005.*

1640-1-19-.15 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS

- (1) On or before June 15 of each year, all Tennessee high schools and home school programs shall utilize available services provided by the corporation or other partnering agencies to submit the name, social security number, grade point averages, and highest composite ACT/SAT scores for academically eligible students, cumulative at least through the seventh semester.
- (2) On or before September 1 of each year, all Tennessee high schools shall revise and submit to the Corporation the information required of each in the paragraph 1 of this rule, cumulative through the eighth semester.
- (3) Eligible postsecondary institutions that enroll students receiving scholarships or grants shall assist in providing and certifying student information necessary for administering, receiving, and evaluating such programs.

Authority: *T.C.A. §§ 49-4-903 and 49-4-924.*

1640-1-19-.16 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD

- (1) All students receiving a TELS award shall reapply for the award by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-1-19-.03 for each subsequent year.
- (2) During the certification process, all eligible postsecondary institutions shall certify the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award at the end of the semester at which the student has attempted twenty-four (24), forty-eight (48), seventy-two (72), ninety-six (96), or one hundred twenty (120) semester hours.

Authority: *§§ 49-4-903, 49-4-911, and 49-4-924.*

1640-1-19-.17 AWARD MADE IN ERROR

If a student receives a TELS award and it is later determined that all or a portion of the award was made in error, the student shall be required to reimburse the eligible postsecondary institution for the amount of the award made in error. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be refunded. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student will be ineligible for student aid from the Corporation until the refund is paid.

Authority: *T.C.A. § 49-4-924.*

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1640-1-19-.18 REFUND POLICY

If a recipient of a TELS award or a Tennessee dual enrollment grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from the Corporation until the refund is paid.

Authority: *T.C.A. § 49-4-924*

1640-1-19-.19 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT

- (1) Students enrolled in a full-time status, as of institutionally defined census date, may not convert to part-time status within the same semester and receive a scholarship award for the succeeding semesters unless the student requests and the institution approves the change to part-time status.
- (2) An institution may allow a change from full-time to part-time status within the same semester only when there are documented medical or personal grounds. Such medical or personal grounds shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, or other extraordinary circumstances beyond the student's control where continued full-time attendance by the student creates a substantial hardship.
- (3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time status within the semester. In the event an institution denies a student's request to change from full-time status to part-time status within a semester, the student may appeal the decision pursuant to Rule 1640-1-19-.26.
- (4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.
- (5) In the event the change to part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record.
- (6) For the purposes of this rule, only courses that are included in the calculation of the grade point average pursuant to Rule 1640-1-19-.22 are to be considered in determining full-time status.

Authority: *T.C.A. §§ 49-4-911, 49-4-912, and 49-4-924.*

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1640-1-19-.20 PERSONAL OR MEDICAL LEAVE OF ABSENCE

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. In addition to the reasons outlined in Rule 1640-1-18, allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which he/she is enrolled. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-1-19-.26.
- (2) A student granted a medical or personal leave of absence who resumes their education at an eligible postsecondary institution shall retain TELS award eligibility until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of one hundred twenty (120) semester hours, or if the student is enrolled in an undergraduate degree program required to be more than one hundred twenty (120) semester hours in length, that student is eligible for a total of one hundred thirty-six (136) semester hours attempted, or the number of hours required for graduation, whichever is less; or
 - (c) The sum of the number of calendar years the student attended a postsecondary institution prior to the leave of absence and the number of calendar years of attendance after the leave of absence equals five calendar years.

Authority: T.C.A. §§ 49-4-903, 49-4-919, and 49-4-924.

1640-1-19-.21 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS

- (1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.
- (2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.
- (3) If due to a military mobilization the student elects to receive an "incomplete" in any or all courses, the provisions of Rule 1640-1-19-.22(13) shall apply.
- (4) Upon re-enrollment within one year following mobilization, the student's TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until the first of the following events:

PUBLIC NECESSITY RULES

- (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of one hundred twenty (120) semester hours, or if the student is enrolled in an undergraduate degree program required to be more than one hundred twenty (120) semester hours in length, that student is eligible for a total of one hundred thirty-six (136) semester hours attempted, or the number of hours required for graduation, whichever is less; or
 - (c) The sum of the number of calendar years the student attended a postsecondary institution prior to the leave of absence and the number of calendar years of attendance after the leave of absence equals five calendar years.
- (5) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.

Authority: *T.C.A. §§ 49-4-903, 49-4-919, and 49-4-924.*

1640-1-19-.22 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE

- (1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation, except as otherwise provided in this rule.
- (2) All credit hours attempted at all postsecondary institutions the student has attended after graduating from high school and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Except as provided in subparagraph (a) of this paragraph, credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation, and are counted towards the limitation on credit hours.
 - (a) A student shall have a one time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for both attempted courses, however, will be included in the one hundred twenty (120) limitation of semester hours.
 - (b) It shall be the responsibility of the student to advise the appropriate official of the eligible postsecondary institution when this option is being exercised.
- (3) Credit hours attempted prior to high school graduation, completion of a home school program in Tennessee or achieve a GED, including those attempted with the Tennessee dual enrollment grant, do not count toward the limitation on semester hours provided in Rule 1640-1-19-.12(3), nor are the grades for those classes included in the postsecondary cumulative grade point average.

PUBLIC NECESSITY RULES

- (4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.12(3).
- (5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.12(3), unless those hours are accepted toward a degree.
- (6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and shall be counted towards the limitation on credit hours provided in Rule 1640-1-19-.12(3).
- (7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award nor will the semester hours be included in the calculation of the postsecondary cumulative grade point average or in the credit hour limitation provided in Rule 1640-1-19-.12(3).
- (8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on semester hours provided in Rule 1640-1-19-.12(3).
- (9) Students who obtain a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-1-19-.26.
- (10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance learning courses if all other eligibility requirements are met. Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance learning courses shall be made in the same manner as transient students as provided in Rule 1640-1-19-.24.
- (11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student receives college credit from the internship or co-op experience and must pay tuition and fees. The semester hours shall be included in the postsecondary cumulative grade point average and count toward the limitation on credit hours as provided in Rule 1640-1-19-.12(3).
- (12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.

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- (13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted. The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.
 - (a) If the student fails to retain eligibility for a TELS award as a result of the calculation, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-1-19-.26.
 - (b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.
- (14) If the student is otherwise eligible to receive a TELS award, but does not receive TELS funding, or TELS funding is reduced because his or her cost of attendance is covered by other aid, all credit hours attempted that semester shall still apply to the credit hour limitation provided in Rule 1640-1-19-.12(3).

Authority: T.C.A. §§ 49-4-903, 49-4-924, and Public Chapter 481, Acts of 2005.

1640-1-19-.23 TRANSFER STUDENTS

- (1) A TELS recipient transferring from an eligible postsecondary institution to another is eligible for a TELS award if all eligibility requirements continue to be met at the postsecondary institution at which the student is currently enrolled.
- (2) Any student who was otherwise eligible for a TELS award upon completion of high school requirements based on the applicable provisions of these rules, but who enrolled in a regionally accredited out-of-state postsecondary institution upon completing high school requirements, may transfer to an eligible Tennessee postsecondary institution and receive a TELS awards. The student must from that point be continuously enrolled in an eligible postsecondary institution and meet all eligibility and retention requirements, as provided in these rules.

Authority: T.C.A. §§ 49-4-910, 49-4-924, and Public Chapter 481, Acts of 2005.

PUBLIC NECESSITY RULES

1640-1-19-.24 TRANSIENT STUDENTS

A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions. The home institution shall award the TELS funds to the transient student based on certification of eligibility from the host institution. The home institution shall certify to the Corporation that the student is eligible for a TELS award. Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall notify its students of the process and the availability of the necessary forms to comply with the requirements. At the end of the semester the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.

Authority: T.C.A. §§ 49-4-903 and 49-4-924.

1640-1-19-.25 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL

A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-1-19-.05 may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons. Acceptable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where timely enrollment by the student would create a substantial hardship. In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to Rule 1640-1-19-.26.

Authority: T.C.A. §§ 49-4-903 and 49-4-924.

1640-1-19-.26 APPEAL AND EXCEPTION PROCESS

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of hearing appeals from decisions denying or revoking applicants' TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a hearing and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a hearing is required the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The IRP shall provide a copy of the written decision to the appellant as soon as practicable. For the purposes of this rule, it will be presumed that the decision was delivered to the appellant two calendar days after the decision was placed in the U.S. Postal Service addressed to the appellant's official mailing address according to the eligible postsecondary institution's records.

PUBLIC NECESSITY RULES

- (2) The Appeals Panel shall be appointed by the Corporation's Executive Director for purpose of hearing appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with the Corporation within fourteen (14) calendar days from the date that the decision was delivered to the student. A complete record of the institutional IRP hearing shall be provided to the Corporation by the student. The Appeals Panel may award or reinstate the student's TELS award without a hearing. This decision shall be made no later than 30 calendar days after an appeal is properly filed and the record from the IRP hearing is received. If the Appeals Panel determines that a hearing is required, it shall provide the appellant with notice of the hearing date, such notice shall include the time and location of the hearing. The Appeals Panel shall hear the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal.
- (3) The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or the Corporation. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or Corporation by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school or collegiate grade point average.

Authority: T.C.A. § 49-4-924.

The public necessity rules set out herein were properly filed in the Department of State on the 4th day of October, 2005, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 18th day of March, 2006. (10-02)

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 16th day of December, 2005.

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: Eric J. Stansell, Staff Attorney, Office of Legal Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

SUBSTANCE OF PROPOSED RULE

CHAPTER 0780-1-84 MEDICAL AND PROFESSIONAL MALPRACTICE CLAIMS AND EXPENSES REPORTING AMENDMENTS

Chapter 0780-1-84 Medical and Professional Malpractice Claims and Expenses Reporting is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-1-84
Medical and Professional Malpractice Claims and Expenses Reporting

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0780-1-84-.01 Purpose and Scope
0780-1-84-.02 Definitions
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0780-1-84-.01 PURPOSE AND SCOPE.

The following rules developed by the Department of Commerce and Insurance govern the reporting of medical or professional malpractice claims and expenses. The purpose of these rules is to facilitate the reporting required by T.C.A. § 56-54-101.

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Authority: T.C.A. § 56-54-101.

0780-1-84-.02 DEFINITIONS.

- (1) "Chiropractor" means an individual licensed pursuant to Title 63, Chapter 4.
- (2) "Clinical Pastoral Counselor" means an individual certified pursuant to Title 63, Chapter 22, Part 2.
- (3) "Closed Claims" means claims that have been paid pursuant to a settlement or judgment, including, claims that were settled or adjudicated with the condition of open medical treatment to the claimant.
- (4) "Commissioner" means the Commissioner of the Department of Commerce and Insurance.
- (5) "Dentist" means an individual licensed pursuant to Title 63, Chapter 5.
- (6) "Department" means the Tennessee Department of Commerce and Insurance.
- (7) "Licensed Clinical Social Worker" means an individual licensed pursuant to Title 63, Chapter 23.
- (8) "Marital and Family Therapist" means an individual licensed pursuant to Title 63, Chapter 22, Part 1.
- (9) "Medical or Osteopathic Physician" means an individual licensed pursuant to Title 63, Chapter 6 or Chapter 9.
- (10) "Nurse Practitioner" means an individual that holds a certificate of fitness issued pursuant to Title 63, Chapter 7, Section 123.
- (11) "Optometrist" means an individual licensed pursuant to Title 63, Chapter 8.
- (12) "Pharmacist" means an individual licensed pursuant to Title 63, Chapter 10.
- (13) "Physician Assistant" means an individual licensed pursuant to Title 63, Chapter 19.
- (14) "Podiatrist" means an individual licensed pursuant to Title 63, Chapter 3.
- (15) "Professional Counselor" means an individual licensed pursuant to Title 63, Chapter 22, Part 1.
- (16) "Pending Claims" means claims that have not been paid pursuant to a settlement or judgment but have been made known to the reporting entity either by a lawsuit or some other manner.
- (17) "Person" means an individual or business entity.
- (18) "Reporting entity" means the following:

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- (a) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to a Tennessee health care institution licensed under Title 68.
- (b) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to any of the following:
 - 1. Podiatrists;
 - 2. Chiropractors;
 - 3. Dentists;
 - 4. Medical and Osteopathic Physicians;
 - 5. Nurse Practitioners;
 - 6. Optometrists;
 - 7. Psychologists;
 - 8. Pharmacists;
 - 9. Physician Assistants;
 - 10. Professional Counselors;
 - 11. Marital and Family Therapists;
 - 12. Clinical Pastoral Counselors; and
 - 13. Licensed Clinical Social Workers.
- (c) Every health care institution licensed pursuant to Title 68, or professional listed in this Rule, except the state and those employed by the state, who does not maintain professional liability insurance.

Authority: T.C.A. § 56-54-101.

0780-1-84-.03 ANNUAL CLAIMS DATA SUBMISSION REQUIREMENT.

- (1) All reporting entities shall individually submit to the Commissioner by April 1 of every year, a claims data file containing all information required by this Chapter for medical or professional malpractice claims and expenses for the period of January 1 through December 31 of the preceding year.
- (2) The claims data file shall be comprised of two (2) data sheets—the Closed Claims Sheet and the Pending Claims Sheet, as set forth and explained in more detail in Appendix A.
- (3) Each claims data file sheet (i.e.—the Closed Claims Sheet and the Pending Claims Sheet) shall contain the following data as set forth and explained in more detail in Appendix A listed by type of provider and indication of specialty, if any:

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- (a) The name of the entity submitting the information required by T.C.A.. § 56-54-101 and these Rules;
- (b) The address of the entity submitting the information required by T.C.A.. § 56-54-101 and these Rules;
- (c) The name and telephone number of a contact person for the entity submitting the information required by T.C.A.. § 56-54-101 and these rules;
- (d) Claim number for each individual and unique claim;
- (e) Type of health care institution or professional (and specialty, if applicable);
- (f) License number of health care institution or professional;
- (g) Date of occurrence of the event that resulted in a medical or professional malpractice claim being filed;
- (h) Claimant's social security number;
- (i) The damages asserted by the claimant listed separately as follows:
 - 1. Damages asserted by the claimant other than amounts asserted by a lawsuit; and
 - 2. Damages asserted by the claimant through a lawsuit; if damages are asserted by the claimant through a lawsuit, the date of the filing of the lawsuit;
- (j) The amounts paid on claims listed separately as follows:
 - 1. Amounts paid by the reporting entity to settle a claim; and
 - 2. Amounts paid by the reporting entity pursuant to a judgment;
- (k) The amounts paid on claims shall be listed separately by the following types of damages:
 - 1. Compensatory damages;
 - 2. Non-economic damages; and
 - 3. Punitive damages;
- (l) Total damages paid on any claim [i.e.—the sum of those amounts found under subsection (k) of this Rule];
- (m) The amounts paid on claims shall be listed separately by the following types of legal expenses:
 - 1. Amounts paid to attorneys for defense counsel, excluding amounts paid for expert witness fees, court costs, deposition costs, and other costs;

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2. Amount of the settlement or judgment that is received by claimant's counsel;
 3. Amounts paid for expert witness fees;
 4. Amounts paid in court costs;
 5. Amounts paid in deposition costs; and
 6. Amounts paid in connection with other legal expenses not previously identified;
- (n) Total legal expenses paid on any claim [i.e.—the sum of those amounts found under subsection (m) of this Rule];
- (o) Total of all costs associated with any claim [i.e.—the sum of those amounts found under subsections (l) and (n) of this Rule].
- (4) The second and subsequent reports filed by April 1 of each year pursuant to this Chapter by each reporting entity shall also contain information identifying those claims that are subject to settlement or judgment which were contained in a prior report as a pending claim.
- (5) Any column left blank by the reporting entity will be assumed to be “not applicable” if any information other than that requiring currency data, and if currency data is required, will be assumed to be zero (0).
- (6) The information found under subsections (3)(a-c) of this Rule will not be included in the annual report prepared for the Speaker of the Senate and the Speaker of the House of Representatives and will be kept confidential by the Commissioner.

Authority: *T.C.A. § 56-54-101.*

0780-1-84-.04 FORMAT FOR SUBMITTED DATA.

- (1) All data submitted to the Commissioner on the claims data file shall be submitted on a Compact Disk (“CD”) in the form created by the Commissioner.
- (2) All data located in columns shall be in alpha-numeric format unless otherwise stated. When using numeric data, only regular decimal formats will be acceptable. No compressed or binary (small integer or large integer) data will be accepted as valid.
- (3) All date data shall be Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2)-digit month (with leading zeros when necessary), a slash (/), a two (2)-digit day (with leading zeros when necessary), a slash (/), and a four (4)-digit year.
- (4) Social Security Number data shall be presented in the following format: the first, second and third characters must be numerals, the fourth character must be a hyphen (-), the fifth and sixth characters must be numerals, the seventh character must be a hyphen (-), and the eighth, ninth, tenth and eleventh characters must be numerals.
- (5) License number data shall be presented in the format of the entire license number expressed numerically without any other characters [e.g.—hyphens (-)] or spaces within the license number.

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- (6) All currency data shall be in units of U.S. dollars rounded to the nearest whole dollar amount. Leading zeros and the dollars signs are not necessary but may be used so long as the currency fields are consistent.

Authority: T.C.A. § 56-54-101.

0780-1-84-.05 PENALTY.

Any reporting entity that fails to comply with the provisions of this Chapter shall be subject to a civil penalty of one hundred dollars (\$100) per day.

Authority: T.C.A. § 56-54-101.

APPENDIX A

SPREADSHEET NAME, FIELD REQUIREMENT OR COLUMN HEADING	DESCRIPTION OF DATA SOUGHT	TECHNICAL FORMATTING OF DATA SOUGHT
Pending Claims Spreadsheet	This should contain information for pending claims that have been asserted through a lawsuit or by other means. This should not include information on claims that have been paid pursuant to a settlement or judgment.	
Closed Claims Spreadsheet	This should contain information for claims that have been paid pursuant to a settlement or judgment, including claims that were settled or adjudicated with the condition of open medical treatment for the claimant.	
Entity Name	This should be the name of the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in alpha-numeric format and reflect the name of the entity as found in the entity's licensure materials (e.g.— insurance company's certificate of authority).
Entity Address 1	This should be the address of the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in alpha-numeric format and reflect the home office address of the entity.
Entity Address 2	This field may be used if the address of the entity is more than one (1) line, but may be left blank if the address of the entity is only one (1) line.	Data shall be in alpha-numeric format and reflect the home office address of the entity.

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Entity Address City	This should be the address city of the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in alpha-numeric format and reflect the home office address city of the entity.
Entity Address State	This should be the address state of the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in alpha-numeric format and reflect the home office address state of the entity. The address state shall be two (2) capitalized characters conforming to the United States Postal Service's state abbreviations conventions.
Entity Address ZIP Code	This should be the address ZIP Code of the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in numeric format and reflect the home office address zip code of the entity. This field shall be presented as a five (5) digit numeral. If applicable, the five (5) digit zip code may be followed by the United States Postal Service's "+4" code, in which case the sixth character must be a plus sign (+), with the seventh, eighth, ninth and tenth characters being numerals.
Entity Contact Person	This should be the name of a contact person representing the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in alpha-numeric format, with the first name of the contact person stated first, followed by a space, followed by the last name of the contact person.

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Entity Contact Telephone Number	This should be the telephone number of a contact person representing the entity submitting the information required by T.C.A.. § 56-54-101 and these rules.	Data shall be in alpha-numeric format. The first three (3) characters must be the area code. The fourth character must be a hyphen. The fifth, sixth, and seventh characters must be the three (3) digit prefix that follows the area code. The eighth character must be a hyphen. The ninth, tenth, eleventh, and twelfth characters must be the last four (4) digits of the phone number. If there is an extension that should be entered, an “x” or an “X” shall be placed in the thirteenth position followed immediately by the extension number with a maximum of six (6) alpha-numeric characters.
Claim Number	This should be the number used to identify each individual and unique claim.	Data shall be in alpha-numeric format and as found in the reporting entity’s records.
Type of Health Care Professional	This should list the type of health care professional against whom the claim was made.	Data shall be chosen from a listing of health care professional options found on the Commissioner’s form.
Health Care Professional Specialty (if applicable)	This should list the medical specialty of the health care professional against whom the claim was made.	Data shall be chosen from a listing of health care professional specialty options found on the Commissioner’s form.
License Number	This should be the health care institution or provider’s license or certificate number.	Data shall be presented in the format of the entire license number expressed numerically without any other characters [e.g.—hyphens (-)] or spaces within the license number.
Date of Occurrence	This should be the date on which the incident arose that gave rise to the medical or professional malpractice claim.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2)-digit month (with leading zeros when necessary), a slash (/), a two (2)-digit day (with leading zeros when necessary), a slash (/), and a four (4)-digit year.

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Claimant's Social Security Number	This should be the Social Security Number held by the person making the claim.	Data shall be presented in the following format: the first, second and third characters must be numerals, the fourth character must be a hyphen (-), the fifth and sixth characters must be numerals, the seventh character must be a hyphen (-), and the eighth, ninth, tenth and eleventh characters must be numerals.
Asserted Damages (other than set forth in lawsuit)	This should include an amount that has been asserted against a reporting entity in a manner other than by filing a lawsuit.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Damages Claimed by Lawsuit".
Damages Claimed by Lawsuit	This should include the amount of damages asserted against a reporting entity in a lawsuit.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Asserted Damages (other than set forth in lawsuit)".
Date of the Filing of a Lawsuit	This should be the date that any lawsuit was filed asserting damages against a reporting entity.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2)-digit month (with leading zeros when necessary), a slash (/), a two (2)-digit day (with leading zeros when necessary), a slash (/), and a four (4)-digit year. Data should be entered in this column only if data is also entered in the column titled "Damages Claimed by Lawsuit".
Amount Paid by Settlement	This should include the total amount paid pursuant to a settlement between the reporting entity and the claimant.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Judgment".

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Amount Paid by Judgment	This should include the total amount paid pursuant to a judgment against the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Settlement".
Compensatory Damages Paid	This should include the amount of settlement or judgment that was identified as compensatory damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Non-Economic Damages Paid	This should include the amount of settlement or judgment that was identified as non-economic damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Punitive Damages Paid	This should include the amount of settlement or judgment that was identified as punitive damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Total Damages Paid	This should include the amount of settlement or judgment that was the sum total of compensatory, non-economic and punitive damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. Data in this column must equal the sum of either "Amount Paid by Settlement" or "Amount Paid by Judgment", plus "Compensatory Damages Paid", "Non-Economic Damages Paid" and "Punitive Damages Paid".
Attorney Fees Paid to Defense Counsel	This should include the amount that was paid to defend the medical or professional malpractice claim. This should not include the expense related to expert witness fees, court costs, deposition costs, and other legal expenses.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Portion of Settlement or Judgment Received by Claimant's Counsel	This should include the portion of the settlement or judgment that the claimant's counsel received for their services.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Expert Witness Fees	This should include the expert witness fees that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.

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Court Costs	This should include the court costs that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Deposition Cost	This should include the deposition costs that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Other Legal Fees	This should include any other legal fees not specifically identified that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Total Legal Expenses	This should include the legal fees that were expended by the reporting entity, including the claimant's attorney fees.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. Data in this column must equal the sum of "Attorney Fees Paid to Defense Counsel", "Portion of Settlement or Judgment Received by Claimant's Counsel", "Expert Witness Fees", "Court Costs", "Deposition Costs" and "Other Legal Fees".
Grand Total Claims Paid	This should include the total amount that was paid on a claim including the amount of settlement or judgment and the total legal expenses expended by the reporting entity, including the claimant's attorney fees.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. Data in this column must equal the sum of "Total Damages Paid" and "Total Legal Expenses".
Disclosed on A Previous Years' Pending Claims Spreadsheet?	This should be answered "Yes" if this claim was found on a previous years' pending claims spreadsheet. Otherwise, this column should be answered "No". This column will be found only on the "Closed Claims Spreadsheet".	Data shall be chosen from a choice of "Yes" or "no" options as found on the Commissioner's form.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2005. (10-45)

RULEMAKING HEARINGS

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

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider subject matter on a subject of possible rulemaking under active consideration of the Board. The comments received at the hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the potential development of further rulemaking action. This notice is given pursuant to TCA § 4-5-204(e) as an invitation for public comment on a subject under consideration for rule-makings. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq.

The hearing will take place in the 9th Floor Conference Room of the L & C Annex located at 401 Church Street, Nashville, Tennessee 37243-1531 on December 20, 2005, at 9:30 a.m.

Written comments will be included in the hearing records if received by the close of business on December 20, 2005 at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to December 20, 2005 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Jeryl Stewart at 615-532-0605. For complete copies of the text of the notice, please contact Lida Galbreath, Department of Environment and Conservation, 9th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243 (615) 532-0606.

BASIS FOR HEARING

In addition to a specific proposed amendment of rule chapter 1200-3-3 which appears in a separate notice of rulemaking hearing herein, the Air Pollution Control Board is soliciting comments on broader issues associated with the secondary ambient standard for gaseous fluorides expressed as hydrogen fluoride. This hearing is authorized pursuant to TCA § 4-5-204(e) for receiving comments that could lead to development of a specific rulemaking proposal. Because the Board indicated its interest in considering a range of alternatives as listed below, there is a need to develop significant aspects of these alternatives and, more basically, to select among the alternatives prior to formulating a proposal to rule chapter 1200-3-3. Unlike the ambient standards established by Chapter 1200-3-3 for the "criteria pollutants" such as ozone, particulate matter, sulfur dioxide, and lead there is no federal ambient standard for hydrogen fluoride, nor has there ever been one. The Clean Air Act established two types of national air quality standards. Primary standards set limits to protect public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards set limits to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings.

The Tennessee Air Pollution Control Board welcomes comments on such issues as (1) whether there should be a primary standard established for gaseous fluorides expressed as hydrogen fluoride, and if so at what level should it be set; (2) if only a secondary standard is desirable, then should the standard remain the

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same or be set a different level; or (3) should the Air Pollution Control Board retain a state-only secondary standard at all.

Authority: *T.C.A. §§4-5-204(e) and 68-201-108(b)*

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2005. (10-50)

RULEMAKING HEARINGS

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

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at these hearings will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. This hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq., and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee at 9:30 a.m. on the 20th day of December, 2005.

Written comments will be included in the hearing records if received by the close of business on December 20, 2005, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to December 20, 2005, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Hernan Flores at 615-532-0593. For complete copies of the text of the notice, please contact Lida Galbreath, Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-3-18 VOLATILE ORGANIC COMPOUNDS

Rule 1200-3-18-.24 Gasoline Dispensing Facilities – Stage I and Stage II Vapor Recovery is amended by deleting it in its entirety and substituting the following so that, as amended, the rule shall read:

1200-3-18-.24 GASOLINE DISPENSING FACILITIES - STAGE I AND STAGE II VAPOR RECOVERY

(1) Applicability and exemptions

(a) Applicability of this rule is as follows:

1. This rule applies to any of the following in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson County:
 - (i) To any gasoline dispensing facility and the appurtenant equipment necessary to the gasoline dispensing facility; and

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- (ii) To any gasoline tank truck that transfers gasoline to storage vessels at such facilities.
 - 2. Any gasoline dispensing facility located in one of the counties specified in Part (1)(a)1 of this rule that exceeds the applicability threshold specified in Parts (1)(b)2 or (1)(b)3 of this rule shall be subject to all of the respective provisions of this rule for facilities exceeding the applicability threshold and shall remain subject to these provisions even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance, as specified in Part (5)(a)3 of this rule.
- (b) Exemptions from this rule are as follows:
- 1. With respect to requirements concerning transfers from gasoline tank trucks to gasoline storage vessels at gasoline dispensing facilities, the following are subject only to Part (3)(a)1 of this rule:
 - (i) Any transfer made to a gasoline dispensing facility storage tank that is equipped with a floating roof or an approved equivalent, this approval being a revision to the State Implementation Plan;
 - (ii) Any stationary gasoline storage container with a capacity that is less than 2,080 liters (L) (550 gallons [gal]) that is used exclusively for the fueling of implements of husbandry;
 - (iii) Any stationary storage tank with a capacity of less than 7,600 L (2,000 gal) that was constructed prior to January 1, 1979; and
 - (iv) Any stationary storage tank with a capacity of less than 950 L (250 gal) that was constructed after December 31, 1978.
 - 2. Any gasoline dispensing facility which dispenses less than 10,000 gallons of gasoline per month is subject only to the provisions of Parts (3)(a)1 and (5)(b)2 of this rule.
 - 3. The requirements of Subparagraph (3)(c) of this rule do not apply to any gasoline dispensing facility which satisfies any of the following:
 - (i) Is in a county other than Davidson, Rutherford, Sumner, Williamson, or Wilson County;
 - (ii) Dispenses less than 10,000 gallons of gasoline per month;
 - (iii) Dispenses less than 50,000 gallons of gasoline per month and is owned by an independent small business marketer of gasoline; or
 - (iv) Dispenses gasoline for only fueling aircraft, marine vessels, or, at an automobile or light-duty truck assembly plant, motor vehicles that are fitted with an onboard vapor recovery system.
- (2) For the purpose of this rule, the following definitions apply:

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- (a) "Independent small business marketer of gasoline" means a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment, unless such person satisfies either of the following:

1. With respect to refining:
 - (i) Is a refiner; or
 - (ii) Controls, is controlled by, or is under common control with, a refiner; or
 - (iii) Is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person); or
2. Receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this definition, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this definition, "control" of a corporation means ownership of more than 50 percent of its stock. Verification of satisfaction of criteria specified in this definition shall be by notarized certification to the Technical Secretary, unless additional verification is requested by the Technical Secretary, in which case this additional verification shall be furnished to the Technical Secretary immediately.

- (b) "Vacuum assist system" means the gasoline vapor recovery system that employs a vacuum generating device to effect transfer of gasoline vapor displaced in fueling a vehicle tank to a gasoline storage tank, vapor storage tank, or vapor processing unit.
 - (c) "Motor vehicle" means any self-propelled vehicle used to carry people or property on a street or highway.
 - (d) "Storage tank or storage vessel" means any stationary tank, reservoir or container used for the storage of a volatile organic liquid.
 - (e) "Volatile organic liquid" means any substance which is liquid at storage conditions and which contains volatile organic compounds.
- (3) Standards as follow apply:
- (a) Standards (Stage I Vapor Recovery) for Gasoline Storage Vessels - The owner or operator of each gasoline dispensing facility subject to this rule shall comply with the following requirements:
 1. All gasoline storage vessels at gasoline dispensing facilities shall be loaded by submerged fill;
 2. All vapor lines on the storage vessel shall be equipped with closures that automatically seal upon disconnect;

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3. All gasoline storage vessels at gasoline dispensing facilities shall be served by a vapor recovery system, approved by the Technical Secretary, certified by the California Air Resources Board, and designed, installed, and maintained to recover gasoline vapors displaced during transfer of gasoline from a tank truck to a storage tank;

Stage I gasoline vapor recovery systems used for this purpose shall be properly certified under the CARB enhanced vapor recovery (EVR) certification procedures effective on or after April 1, 2001, or shall be listed under the following pre-EVR CARB Executive Orders; mixing of components certified under separate CARB certification procedures will not be allowed.

Number	(Pre EVR) Vapor Recovery Certification Phase I (Stage I) Executive Orders Description	Date
G-70-97-A	Stage I Vapor Recovery Systems for Underground Gasoline Tanks at Service Stations	12/9/85
G-70-102-A	Certification of a Phase I Vapor Recovery System for Aboveground Storage Tanks with less than 40,000 Gallons Capacity for Gasoline or Gasoline/Methanol Blended Fuels	5/25/93

4. If a gauging well separate from the fill tube is used for manual measurement, it shall be provided with a submerged drop tube that extends to within 150 mm (5.9 in) of the gasoline storage vessel bottom; and
 5. Liquid fill connections for all systems shall be equipped with vapor-tight caps.
- (b) Standards (Stage I Vapor Recovery) for Gasoline Transfers from Tank Trucks to Storage Vessels - The owner or operator of a gasoline tank truck shall not unload gasoline to a gasoline storage vessel subject to vapor-tightness requirements during unloading unless the following conditions are met:
1. All hoses, adaptors, and couplers in the vapor balance system are properly connected;
 2. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight;
 3. All vapor return equipment are compatible with the vapor balance equipment installed on the gasoline dispensing facility storage vessel;
 4. All hatches on the gasoline tank truck are kept closed and securely fastened; and
 5. The filling of storage vessels at gasoline dispensing facilities is limited to unloading by vapor-tight gasoline tank trucks.

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- (c) Standards (Stage II Vapor Recovery) for Gasoline Storage Vessels and Dispensing Equipment- The owner or operator of each gasoline dispensing facility subject to this rule shall comply with the following requirements:
1. All gasoline dispensing shall be by equipment served by a vapor recovery system approved by the Technical Secretary, certified by the California Air Resources Board, and designed, installed, operated, and maintained to recover gasoline vapors displaced during dispensing to motor vehicle fuel tanks, and accessible for inspection and testing;
 2. The vapor recovery system shall include for any dispenser and system the following:
 - (i) Vapor-tight coaxial hose to conduct vapors captured during dispensing, except on new vehicle fueling lines at motor vehicle assembly plants where vapor-tight dual hose on vacuum assist systems may be employed in lieu of vapor-tight coaxial hose;
 - (ii) For balance systems:
 - (I) Installation of piping between the dispenser and the vapor collection tank which precludes liquid blockage in the piping; and
 - (II) No device which inhibits immediate testing for dynamic backpressure;
 - (iii) For vacuum assist systems, sufficient vacuum to prevent escape of gasoline vapors during dispensing;
 - (iv) Vapor-tight piping, fittings, caps, couplers, and adapters; and
 - (v) Maintenance of vapor tightness throughout the vapor recovery system, except during facility storage tank loading, gauging, and sampling and during maintenance and testing necessitating disruption in the integrity of the system.
 3. Use of any aftermarket or rebuilt parts is restricted to parts approved by the California Air Resources Board.
 4. Gasoline shall not be dispensed from a dispensing unit served by or permitted to be served by a component which does not satisfy the following:
 - (i) Each component required for operation of the system is in place and, to the extent it can be confirmed by sensory inspection, is unimpaired and operational;
 - (ii) Each nozzle boot is not torn in either of the following manners:
 - (I) Triangular - shaped or similar tear 1/2 inch or more to a side, or hole 1/2 inch or more in length; or
 - (II) Slit 1 inch or more in length.
 - (iii) Each faceplate or flexible cone is not damaged in the following manner:

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- (I) For balance nozzles and nozzles for aspirator and eductor assist type systems, damage such that the capability to achieve a seal with a fillpipe interface is diminished for an accumulated total of 1/4 of the circumference of the faceplate; or
 - (II) For nozzles for vacuum assist systems, more than 1/4 of the flexible cone is missing;
 - (iv) Each nozzle shutoff mechanism is operational;
 - (v) Each vacuum producing unit is operational;
 - (vi) Each vapor processing unit is operational;
 - (vii) Each fitting, cap, coupler, and adapter is vapor-tight; and
 - (viii) Each pressure/vacuum relief valve, vapor check valve, and dry break is operational.
5. The owner or operator shall conspicuously display fueling instructions and information in the gasoline dispensing area. These instructions and this information shall describe to customers clearly the proper procedure to be used for fueling vehicles from the dispenser. These instructions and this information shall include instruction about the proper method of reporting system defects first to facility management, and, then if defects are not corrected, to the Technical Secretary. The notice of the method of reporting to the Technical Secretary shall be displayed no earlier than 3 months after and no later than 6 months after the display of the other instructions and information listed above.
- (4) Test methods as follow apply:
- (a) Unless otherwise specified in this rule, the test method found in Rule .85 of this chapter to determine compliance with the vapor-tight requirements of Paragraph (3) of this rule for lines, piping, caps, couplers, adapters, and fittings;
 - (b) The test methods found in Appendix J, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA - 450/3-91-022b (November 1991), to determine compliance with applicable requirements specified in Subparagraph (3)(c) of this rule; and/or
 - (c) Other methods necessary for demonstration of compliance approved by the Technical Secretary and the EPA.
- (5) Notification, Recordkeeping and Reporting requirements
- (a) Notification requirements apply as follows:
 - 1. Initial Compliance Certifications - The owner or operator of any facility containing sources subject to this rule shall comply with the requirements in paragraph 1200-3-18-.04(1) of this chapter, except that for gasoline dispensing facilities in Anderson, Blount, Carter, Cheatham, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Sevier, Shelby, Sullivan, Tipton,

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Unicoi, Union, and Washington Counties that are existing sources on December 29, 2004, the initial compliance certifications shall be submitted by May 1, 2006, instead of the date specified in paragraph 1200-3-18-.04(1).

2. Testing Notification - The owner or operator of any facility containing sources subject to this rule shall provide the Technical Secretary written notice of any compliance demonstration testing. This notice shall be provided to the Technical Secretary such that the Technical Secretary is informed of the proposed testing at least 14 days before the proposed date of testing, thereby providing the Technical Secretary opportunity to observe the testing.
 3. Threshold exceedance notification
 - (i) The owner or operator of any gasoline dispensing facility that, for the first time dispenses 10,000 gallons of gasoline or more in any calendar month and is no longer subject only to the provisions of Parts (3)(a)1 and (5)(b)2 of this rule, shall inform the Technical Secretary within 30 days.
 - (ii) The owner or operator of any gasoline dispensing facility that, for the first time dispenses 50,000 gallons of gasoline or more in any calendar month and is no longer exempt from the requirements of Subparagraph (3)(c) of this rule, shall inform the Technical Secretary within 30 days.
- (b) Recordkeeping requirements apply as follow:
1. Each owner or operator subject to provisions of this rule shall comply with the record-keeping requirements of this rule. Except as otherwise specified in this chapter, these records will be maintained for a minimum of 3 years and shall be made available to the Technical Secretary upon request.
 2. If any exemption based upon the quantity of gasoline dispensed is claimed for a facility subject to this rule, the owner or operator of the facility shall maintain records showing the quantity of gasoline dispensed each month at the facility.
 3. Required permits and required logs of maintenance shall be kept at the facility for which the permits are issued and the logs created.
- (c) Reporting requirements apply as follows:
1. Excess Emissions Report - The owner or operator of any facility containing sources subject to this rule shall comply with the requirements in paragraph .04(2) of this chapter.
- (6) Compliance Demonstration Testing - The owner or operator of any facility containing sources subject to the provisions of Subparagraph (3)(c) of this rule shall:
- (a) No later than the applicable date specified in Paragraph (7) of this rule, demonstrate compliance (for the complete system) with the provisions of Subparagraph (3)(c) of this rule, according to the applicable test methods specified in Paragraph (4) of this rule;
 - (b) Within 30 days following the occurrence of an incident which could reasonably be expected to have adversely affected the performance of the system, such as excavation near system piping or following replacement of the system, perform applicable testing to demonstrate compliance is maintained; and

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- (c) Within 5 years following any compliance demonstration for the complete system, demonstrate the system maintains compliance.
- (7) Initial Compliance Dates for the requirements of Subparagraph (3)(c) shall be as follows:
 - (a) For facilities subject to this rule owned by an independent small business marketer of gasoline:
 - 1. No less than one-third of these facilities shall have achieved compliance by June 21, 1994;
 - 2. No less than two-thirds of these facilities shall have achieved compliance by June 21, 1995;
 - 3. All facilities shall have achieved compliance by June 21, 1996; and
 - 4. By June 21, 1994, the independent small business marketer shall designate in writing to the Technical Secretary which facilities will achieve compliance by the respective dates of Parts 1, 2, and 3 of this subparagraph.
 - (b) For facilities subject to this rule not owned by an independent small business marketer of gasoline:
 - 1. For which construction commenced after November 15, 1990, compliance shall be achieved by December 21, 1993;
 - 2. Which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before June 21, 1993, and for which construction commenced before November 15, 1990, compliance shall be achieved by June 21, 1994, and
 - 3. Not accounted for in Parts 1 and 2 of this subparagraph, compliance shall be achieved by June 21, 1995.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202 et seq., and 68-201-105.

This notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of October, 2005. (10-30)

RULEMAKING HEARINGS

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF SOLID WASTE MANAGEMENT

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, acting on behalf of the Tennessee Solid Waste Disposal Control Board, to consider the adoption and promulgation of rules and amendments to rules (revision "z") pursuant to the Tennessee Code Annotated Sections 68-212-106, 68-212-107, 68-212-108, 68-212-109, 68-212-110 and 68-212-114; the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated, Section 68-211-101 et seq; the Tennessee Environmental Protection Fund Act, Tennessee Code Annotated, Section 68-203-101 et seq; the Used Oil Collection Act of 1993, Tennessee Code Annotated, Section 68-211-1001 et seq; and the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-101 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place in the 5th Floor Conference Room, L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 PM CST on December 20, 2005.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to December 20, 2005 (or the date such party intends to review such filings), to allow time to provide such aid or services. Contact the ADA Coordinator at 1-615-532-0200 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

INFORMATIVE SUMMARY OF PROPOSED RULES

This rulemaking, revision "z", includes multiple and various additions, deletions, and modifications to Rule Chapter 1200-1-11 Hazardous Waste Management. Many of these changes are proposed in response to revisions and additions published in Federal Registers that the U. S. Environmental Protection Agency (EPA) made primarily between July 1, 2004 and August 5, 2005 and on October 4, 2005, except for October 25, 2004, to the corresponding Federal Regulations. These amendments are intended to make the State's Regulations equivalent to their Federal counterparts. They include certain technical corrections, definitions, housekeeping changes, clarifications, reference changes, typos, and other corrections.

Modifications in the federal regulations include listing K181 as hazardous nonwastewater generated from the production of certain dyes, pigments, and F D & C colorants; adding five toxic constituents to the list of hazardous constituents that serves as the basis for clarifying wastes as hazardous and establishes Land Disposal Restrictions (LDR) treatment standards for them; revising the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms (Forms 8700-22 and 22a) used to track hazardous waste from generation to disposition and standardize their content and appearance; amending a variety of testing and monitoring requirements in the RCRA hazardous and non-hazardous solid waste regulations; allowing flexibility when conducting RCRA-related sampling and analysis by removing a requirement to use methods found in SW-846; and adding certain mercury containing equipment to the list of universal waste. Additional modifications include adding 2 solvents to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste. Other exemptions include scrubber waters derived from the combustion of exempted solvents. Further, generators may directly measure solvent chemical levels at the "headworks" of the wastewater treatment system.

Departmental modifications include deleting certain language in Rule 1200-1-11-.02(1)(e)2 to make it equivalent to EPA's. Further, certain definitions from the April 22, 2004 Federal Register, pages 21752 and 21753, are being added to Rule 1200-1-11-.01(2)(a). Clarifying definitions regarding frequency/time are added to Rule 1200-1-11-.01(2)(a). also being

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OTHER INFORMATION

The Division has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review only at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Assistance Centers located as follows:

Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mount. Moriah Road
Memphis, TN 38115-1520
(901) 368-7939/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
362 Carriage House Drive
Jackson, TN 38305-2222
(731) 512-1300/ 1-888-891-8332

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

Columbia Environmental Field Office
2484 Park Plus Drive
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
Suite 220- State Plaza
2700 Middlebrook Pike
Knoxville, TN 37921-5602
(865) 594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

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

McIver's Grant Public Library
204 North Mill Street
Dyersburg, TN 38024-4631
(731) 285-5032

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

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

Clarksville-Montgomery County Public
350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
(931) 648-8826

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

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

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

Kingsport Public Library & Archives
400 Broad Street
Kingsport, TN 37660-4292
(423) 229-9489

RULEMAKING HEARINGS

The "DRAFT" rules may also be accessed for review using:

<http://www.state.tn.us/environment/swm/swmppo>

Copies are also available for review at the Nashville Central Office (see address below). They may be purchased at the central office location only (\$75.00 per copy if picked up or \$84.00 per copy if mailed, which includes shipping and handling, payable in advance).

Tennessee Department of Environment and Conservation
Division of Solid Waste Management
5th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-1535
(615) 532-0780

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Solid Waste Management; Tennessee Department of Environment and Conservation; Attention: Mr. Gerald Ingram; 5th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0850 or FAX 615-532-0886. However, such written comments must be received by the Division by 4:30 PM CST, January 5, 2006 in order to assure consideration. For further information, contact Mr. Gerald Ingram at the above address or telephone number.

The notice of rulemaking hearing set out herein was properly filed in the Department of state on the 24th day of October, 2005, (10-26)

RULEMAKING HEARINGS

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF UNDERGROUND STORAGE TANKS

The Tennessee Petroleum Underground Storage Tank Board will hold public hearings to receive comments concerning amendments to the Rules of the Department of Environment and Conservation Division of Underground Storage Tanks Chapter 1200-1-15 Underground Storage Tank program pursuant to T.C.A. § 68-215-113. These hearings will be conducted as prescribed by the Uniform Administrative Procedures Act T.C.A. § 4-5-201 et. seq.

The hearing will take place in the 17th Floor Conference Room at the L & C Tower, 401 Church Street, Nashville, Tennessee at 9:30 A.M. CST on Wednesday, December 21, 2005.

Written comments will be considered if received by close of business, January 4, 2006, at the office of the Technical Secretary, Tennessee Petroleum Underground Storage Tank Board, 4th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1531. Written comments may also be submitted by e-mail to Donna.Washburn@state.tn.us.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to the date of the hearing or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation Kim McCrary, ADA Coordinator, 12th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-0437, 615-532-0211.

For complete copies of the text of the notice, please contact Donna Washburn, Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, 4th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1531, 615-532-0987. Copies may also be obtained at the Environmental Assistance Centers for the Department of Environment and Conservation, which can be reached by calling 1-888-891-TDEC(8332). The notice and copies of the proposed rules are posted on the web site for the Division of Underground Storage Tanks, <http://www.state.tn.us/environment/us>.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-1-15-.02 UST Systems: Installation and Operation is amended by deleting part (1)(b)1 in its entirety and replacing it with the following:

1. The piping, whether rigid or flexible in design, is constructed of nonmetallic materials.
 - (i) Piping installed on or after the effective date of the emergency rule shall meet or exceed the Standard for Safety established by Underwriters Laboratory in UL 971 - "Nonmetallic Underground Piping for Flammable Liquids", July 1, 2005. This requirement shall apply to all new and/or replacement piping.
 - (ii) Pipe marking or labeling shall comply with the Underwriters Laboratory standard referenced in subpart (i) of this part. Piping shall, at a minimum, be permanently and legibly marked with the following information at ten (10) foot intervals:

RULEMAKING HEARINGS

- (I) The manufacturer's name, trade name, trademark, or other information that identifies the manufacturer;
- (II) Manufacturing date, or a verifiable date code, accurate to at least the quarter of a year in which the pipe was manufactured;
- (III) The nominal size of the pipe and a number identifying the pipe, such as a catalog, model or part number;
- (IV) The maximum pressure rating (psig) and the statement: Underground Use Only;
- (V) The type of pipe system(s), which may be abbreviated, and which may include, but not be limited to:
 - I. Primary Carrier;
 - II. Secondary Containment;
 - III. Integral Primary/Secondary;
 - IV. Normal Vent; and/or
 - V. Vapor Recovery;
- (VI) The flammable liquid group rating(s), which may be abbreviated, and which may include, but not be limited to:
 - I. Motor Vehicle Fuels;
 - II. Concentrated Fuels;
 - III. High Blend Fuel; and/or
 - IV. Aviation and Marine Fuels.

Authority: T.C.A. § 68-215-107 and T.C.A. §§4-5-201 et seq.

NEW RULE

Rule Chapter 1200-1-15 is amended by adding the following item in the Table of Contents and the following text for the new rule:

1200-1-15-.13 VOLUNTARY REGISTRY

The substance of Rule 1200-1-15-.13 Voluntary Registry, which is authorized and required by T.C.A. § 68-215-130. Voluntary registry for persons who own an interest in petroleum sites., is:

- (1) Registration

RULEMAKING HEARINGS

- (a) Any person that owns an interest in a petroleum site, including without limitation, owners in fee simple and holders, as defined in rule 1200-1-15-.01(4), may register with the voluntary registry maintained by the division.
 - (b) Any person intending to become a registrant shall register by completing and submitting to the division the registration form designated by the division. The form shall be completed accurately and in its entirety in accordance with instructions provided by the division. At a minimum the registration form shall provide:
 - 1. Name, address and phone number of the person submitting the registration form, and
 - 2. The facility identification number assigned to the UST facility by the division and the location and/or the address of the facility.
 - (c) Notification of Registration in the Voluntary Registry shall be dispatched as set forth in parts 1 and 2 of this subparagraph.
 - 1. The registrant shall be notified by the division of current registration in the Voluntary Registry. This notification shall also set forth the due date for the annual fee for renewal of registration.
 - 2. The owner of the tanks at the facility provided in the registration form shall be sent notification of the registration in the Voluntary Registry. The notification shall inform the tank owner that the registrant shall be sent copies of all notices sent to the tank owner in accordance with paragraph 3 of this rule.
 - (d) Registration shall be amended by the registrant whenever the pertinent information contained in the registration form has changed by re-submitting to the division a registration form with revised information.
- (2) Fees
- (a) All registrants shall pay an annual fee of \$500 per site.
 - (b) The annual fee shall be paid upon initial registration and on each anniversary of such initial registration date thereafter until the registration is removed or withdrawn as provided in this rule.
 - 1. Each year, the department shall send the registrant an invoice at least sixty (60) days prior to the annual fee due date.
 - 2. If the registrant has not renewed the annual registration for the subsequent year, the department shall send the registrant a second invoice by certified mail at least thirty (30) days prior to the fee due date.
 - (c) The division may remove a registrant from the Voluntary Registry in the event that the annual fee is not paid when due, the registrant shall be notified that he has been removed from the Voluntary Registry. Restoration to the Voluntary Registry shall be accomplished by fee payment and submittal of a new registration form.
- (3) Notices to Registrants

RULEMAKING HEARINGS

- (a) A copy of each notice issued to the tank owner, tank operator or petroleum site owner by the division, which concerns the underground storage tank facility provided in the registration form in accordance with part (1)(b)2 of this rule, shall be sent to the registrant.
 - (b) Each copy of a notice to the registrant shall be sent by the division simultaneously with the original notice to the owner and/or operator or petroleum site owner, and delivered in the same manner as the original notice.
 - (c) Notices to be copied to the registrant include, but are not limited to, invoices for tank and/or compartment fees, letters establishing deadlines for compliance with release response requirements, notices of violation and notices relating to loss of fund eligibility.
 - (d) Copies of notices sent to the registrant shall be sent to the current address appearing in the registration, as amended by the registrant due to change of address.
- (4) Withdrawal of Registration
- (a) A registrant may have their name removed from the Voluntary Registry at any time by requesting removal in writing.
 - (b) An owner and/or operator of a UST on a petroleum site or the owner of the petroleum site may petition the division for removal of a registration if such owner and/or operator or petroleum site owner can demonstrate that the registrant does not have a current interest in that petroleum site. Prior to making any determination on the removal of a registration based on the petition of the owner or operator or petroleum site owner, the division shall notify the registrant and the registrant shall have an opportunity to confirm its current interest in the petroleum site.
 - (c) A registrant whose only interest in a petroleum site is as a holder shall withdraw or otherwise approve the removal of its registration no later than thirty (30) days following the satisfaction of the secured debt.

Authority: T.C.A. §§68-215-107, 68-215-130 and T.C.A. §§4-5-201 et seq.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of October, 2005. (10-38)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 WATER QUALITY CONTROL BOARD

There will be a series of hearings before representatives of the Water Quality Control Board to consider the promulgation of amendments of rules pursuant to the Tennessee Water Quality Control Act of 1977, Sections 69-3-105 (1), 69-3-105 (3), and 69-3-107 (11). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the following times and locations:

Date	Site	Hearing Location	Time
January 3, 2006	Franklin	Auditorium Williamson County Administrative Complex 1320 West Main Street	7:00 p.m. CST
January 5	Nashville	Ruth Neff Conference Room 17th Floor, L & C Tower 401 Church Street	1:30 p.m. CST
January 9	Elizabethton	Conference Room Sycamore Shoals State Park 1651 West Elk Avenue	7:00 p.m. EST
January 10	Kingsport	Auditorium Visitors Center Warriors' Path State Park Hemlock Road	1:30 p.m. EST
January 10	Pittman Center	Conference Room Pittman Center City Hall Pittman Center	7:00 p.m. EST
January 11	Knoxville	Main Conference Room Knoxville Environmental Field Office 2700 Middlebrook Pike	1:30 p.m. EST
January 12	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	1:30 p.m. EST
January 18	Memphis area	Main Conference Room Lakeland City Hall 10001 U.S. Highway 70 Lakeland, Tennessee	1:30 p.m. CST

RULEMAKING HEARINGS

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Water Pollution Control 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 Department of Environment and Conservation's ADA Coordinator at 12th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243, (615) 532-0200.

For a copy of the entire text for this notice of rulemaking hearing, contact: Greg Denton, Division of Water Pollution Control, 7th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee, 37243-1534, 615-532-0699.

SUMMARY OF PROPOSED REVISIONS TO RULES

The Tennessee Water Quality Control Board has initiated the rulemaking process to make revisions to Tennessee's General Water Quality Criteria and Stream-use Classifications for Surface Waters. The federal Clean Water Act requires that these rules be reviewed and revised no less often than every three years. These regulations classify surface waters for one or more of seven designated uses and establish narrative or numerical criteria to protect water quality for each use. They also have specific provisions for the protection of high quality waters.

CHAPTER 1200-4-4 USE CLASSIFICATIONS FOR SURFACE WATERS.

Relatively few changes are being proposed for the use classifications for stream segments. The majority of these changes involve the moving of streams or stream segments from "unnamed" status to "named" status. For these streams, classified uses will be specifically identified.

In one specific set of changes, the streams in the Barren River headwaters in Sumner, Macon, and Clay counties along the Kentucky border will be separated from the streams of the Upper Cumberland watershed. As the Barren system drains to the Ohio River independent of the Cumberland River, this change will help prevent misunderstandings due to watershed boundaries.

CHAPTER 1200-4-3 GENERAL WATER QUALITY CRITERIA.

This rulemaking involves all of the sections of the rule dealing with the water quality criteria and the antidegradation policy. A number of specific changes are being proposed. Most of these changes are updates to reflect current science and other revisions recommended by the Environmental Protection Agency (EPA). Proposed revisions to this Chapter include, but are not limited to:

(1) Updates to numeric criteria for protection of fish and aquatic life. In each case, acute and chronic values will be updated to reflect the current national criteria recommended by the EPA. Substances for which new or revised criteria are being proposed include trivalent chromium, iron, lindane, tributyltin, and PCBs. Revisions will also include the adoption of a formula for calculating an instream ammonia criterion based on pH and temperature.

(2) Clarification of existing numeric fish and aquatic life criteria for dissolved oxygen and pH to simplify regionally-based exceptions.

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- (3) Updates to numeric criteria for protection of recreation. In each case, the “water and organisms” and “organisms only” values will be updated to reflect the current national criteria recommended by the EPA.
- (4) Under recreational use, include a narrative nutrient criteria specific to conditions affecting lakes. Additionally, adopt a numeric chlorophyll criterion for two mainstem Tennessee River reservoirs shared with Alabama (Pickwick and Guntersville). In both cases, the majority of the reservoir surface area is in Alabama. For Pickwick Reservoir, the point of criteria compliance would be in Tennessee. For Guntersville Reservoir, the compliance point would be in Alabama.
- (5) Under the Antidegradation Statement, create a simplified set of characteristics for identifying high quality streams. Create a category of waters called Exceptional Tennessee Waters.
- (6) Extend the downstream boundary of the existing Outstanding National Resource Water (ONRW) designation for the Little Pigeon River in Sevier County. The existing boundary is the lower city limit for the town of Pittman Center. The revision would extend the boundary down to the mouth of Mill Branch, just upstream of Richardson Cove.

Authority: *Tennessee Water Quality Control Act of 1977, Sections 69-3-105 (1), 69-3-105 (3), and 69-3-107 (11).*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2005. (10-47)

RULEMAKING HEARINGS

Notice of Rulemaking Hearing

Tennessee Department of Environment and Conservation Water Quality Control Board

There will be a series of hearings before representatives of the Water Quality Control Board to consider the promulgation of amendments of rules pursuant to the Tennessee Water Quality Control Act of 1977, Sections 69-3-108 (b) (1), 69-3-105 (b), and 69-3-107 (11). These hearings will be held in conjunction concurrent with hearings to consider changes to Chapters 1200-4-3 and 1200-4-4 which are the subject of another notice in this Register. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the following times and locations:

Date	Site	Hearing Location	Time
January 3, 2006	Franklin	Auditorium Williamson County Administrative Complex 100 West Main Street	7:00 p.m. CST
January 5	Nashville	Ruth Neff Conference Room 17th Floor, L & C Tower 401 Church Street	1:30 p.m. CST
January 9	Elizabethton	Conference Room Sycamore Shoals State Park 1651 West Elk Avenue	7:00 p.m. EST
January 10	Kingsport	Auditorium Visitors Center Warriors' Path State Park Hemlock Road	1:30 p.m. EST
January 10	Pittman Center	Conference Room Pittman Center City Hall Pittman Center	7:00 p.m. EST
January 11	Knoxville	Main Conference Room Knoxville Environmental Field Office 2700 Middlebrook Pike	1:30 p.m. EST
January 12	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	1:30 p.m. EST

RULEMAKING HEARINGS

January 18	Memphis area	Main Conference Room Lakeland City Hall 10001 U.S. Highway 70 Lakeland, Tennessee	1:30 p.m. CST
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Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Water Pollution Control 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 Department of Environment and Conservation's ADA Coordinator at 12th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243, (615) 532-0200.

For a copy of the entire text for this notice of rulemaking hearing, contact: Dan Eagar, Division of Water Pollution Control, 7th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee, 37243-1534, 615-532-0708.

SUBSTANCE OF PROPOSED RULES

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF WATER POLLUTION CONTROL

CHAPTER 1200-4-7 RULES OF THE WATER QUALITY CONTROL BOARD

AMENDMENTS

Rules 1200-4-7-.01 through .04 are amended by deleting them in their entirety and substituting in their place the following:

TABLE OF CONTENTS

1200-4-7-.01	General
1206-4-7-.02	Exemptions
1200-4-7-.03	Definitions
1200-4-7-.04	Permits

1200-4-7-.01 GENERAL

- (1) These rules are promulgated in order to prevent the future pollution of state waters and to plan for the future use of such waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters, T.C.A. §69-3-102(b). Persons who wish to conduct an activity that may impact a water of the state shall consider avoidance and minimization of such impacts. When a proposed activity may result in degradation of waters, the alternatives analysis shall be part of the application process and shall include a discussion of the feasibility of all potential alternatives, plus the social and economic considerations and environmental consequences of each consistent with the requirements of Chapter 1200-4-3-.06. If impacts to the waters will occur, mitigation as set forth in part (7) of these rules must be proposed to offset any lost resource value.

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- (2) The Federal Water Pollution Control Act or Clean Water Act, §401 (33 U.S.C. §1341), provides that an applicant for a federal license or permit for a discharge into the waters of the United States must provide the federal licensing or permitting agency a certification from the State in which the discharge originates or will originate, and that any such discharge will comply with the applicable provisions of §§301, 302, 303, 306 and 307 of that Act.
- (3) Additionally, the Tennessee Water Quality Control Act of 1977, T.C.A. §69-3-108(b)(1), provides that it is unlawful for any person, except in accordance with the conditions of a valid permit, to carry out any activity which may result in the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the State, including wetlands. These activities include, but are not limited to: the discharge of dredge or fill material, dredging, stream channel modifications, water withdrawals, wetlands alterations including drainage, and other construction activities which result in the alteration of the waters of the State. State permits for these activities are either §401 Water Quality Certifications or Aquatic Resource Alteration Permits.
- (4) This regulation prescribes procedures peculiar to these permits, in addition to the requirements and procedures of Chapters 1200-4-3 and 1200-4-4 of the Rules of the Water Quality Control Board and the Department of Environment and Conservation, and the Tennessee Water Quality Control Act of 1977.

Authority: T.C.A. §69-3-105(b), §69-3-108

1200-4-7-.02 EXEMPTIONS

- (1) Management activities such as timber harvesting and beaver control which do not alter or adversely affect the classified uses of waters of the state are not subject to these requirements.
- (2) Agriculture and forestry activities and activities necessary to the conduct thereof and lands devoted to the production of agricultural or forestry products are exempt from the requirements of the Act and these rules, unless there is a point source discharge, as provided in T.C.A. §69-3-120(g). Thus, normal farming, forestry and livestock management activities such as plowing, seeding, cultivating, minor drainage, water withdrawal for irrigation, and harvesting for the production of food, fiber, and forest products are exempt if they are part of an established (i.e., on-going) farming, forestry, or livestock management operation, unless there is a point source discharge.
- (3) The Department of Agriculture provides guidance for development of best management practices (BMPs) for agriculture and forestry. One of the primary goals of these BMPs is the prevention of soil erosion and discharge of silt and sedimentation to streams. These BMPs should be followed. If silvicultural activities fail to use BMPs and a point source discharge results in water pollution, the Commissioner is authorized to issue a stop work order under P.Ch. 680 of the Acts of 2000.
- (4) Existing water withdrawals on July 25, 2000 which do not adversely alter or effect the classified use of the source stream are not subject to these requirements.

Authority: T.C.A. §69-3-105(b), §69-3-108

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1200-4-7-.03 DEFINITIONS

As used in this rule chapter and in any ARAP permit issued, including General Permits, the following terms have these meanings:

- (1) "Act" means The Tennessee Water Quality Control Act of 1977, as amended, T.C.A. §69-3-101 et seq.
- (2) "Activity " means any and all work or acts associated with the performance, or carrying out of a project or a plan, or construction of a structure.
- (3) "Adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the State by man-made dikes or barriers, natural river berms and the like are "adjacent wetlands".
- (4) "Aquatic Resource Alteration Permit" means a permit pursuant to §69-3-108 of the Tennessee Water Quality Control Act of 1977, which authorizes the alteration of properties of waters of the State which result from activities other than discharges of wastewater through a pipe, ditch or other conveyance. Such a permit shall impose conditions, including standards and terms of periodic review, as are necessary to accomplish the purposes of the Act.
- (5) "Background Conditions" means the biological (plant and animal species), chemical and physical conditions of the wetland or water body prior to the proposed activity. If the water body is disturbed, it may be necessary to use the biological, chemical and physical conditions of a similar water body as a reference condition.
- (6) "Best Management Practices" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the State. BMP's include methods, measures, practices, and design and performance standards.
- (7) "Certification" means a permit under the Tennessee Water Quality Control Act of 1977, as required by §401 of the Federal Water Pollution Control Act, which certifies, either unconditionally or through imposition of terms under which the activity must be carried out, that the activity will comply with applicable provisions of §§301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Chapters 1200-4-3 and 1200-4-4 of the Rules of the Water Quality Control Board and the Department of Environment and Conservation and the Act.
- (8) "Channelization" means the alteration of stream channels including but not limited to straightening, widening, or enlarging.
- (9) "Cofferdam" means an enclosure from which water can be pumped to expose the bottom of a body of water or a barrier constructed to divert the flow of water to allow construction work.
- (10) "Commence Construction" means the physical initiation of on-site structural or earthmoving work.
- (11) "Constructed Wetland" means intentionally designed, built and operated on previously nonwetland sites for the primary purpose of wastewater treatment or stormwater retention; such wetlands are not created to provide mitigation for adverse impacts or other wetlands.
- (12) "Clearing and Grubbing" means the removal of vegetation by cutting and digging up roots and stumps.

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- (13) "Cumulative Impacts" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. A cumulative impact to a wetland can be the loss of the variety of the natural wetland types, wetland acreage, functions and classified uses.
- (14) "Debris" means woody materials, trash, flotsam, dislodged vegetation, and other potentially mobile materials which may, when located within a stream channel, contribute to flow blockage. This does not include gravel, sand, soil or its constituents such as silt, clay or other sediments.
- (15) "Degradation" means the alteration of the properties of waters by the addition of pollutants or removal of habitat.
- (16) "Ditch" means a man-made excavation for the purpose of conveying water. Ditches do not include streams, modified streams or canals.
- (17) "Dredging" (sand and gravel dredging) means the removal of sand, gravel and similar sediments or deposits from a stream, river, or lake bed or wetland by any method.
- (18) "Earthmoving" means any construction or other activity, which disturbs the surface of the land including, but not limited to, excavation, embankment, fill, and cut of soil, rock, or earth.
- (19) "Emergency" means a situation where life or substantive improvements to real property is in immediate danger.
- (20) "Erosion" means the process by which the land surface is worn away by the action of water, wind, gravity, chemicals, or a combination thereof.
- (21) "Excavation" (a) means a cavity formed by digging, quarrying, uncovering, displacing, or relocating soil or rock; or, (b) means to dig or remove soil, rocks, or other materials resulting in a change in all or part of the elevation of a site.
- (22) "General Permit" means a permit issued under the Act and this Rule authorizing an alteration to state waters within the state for a specified category of activities that are substantially similar in nature.
- (23) "Hydrogeomorphic System" means a classification system for wetlands based on geomorphic setting, water source, and hydrodynamics; used to identify and group functionally similar wetlands.
- (24) "Individual Permit" means a permit issued by the Division of Water Pollution Control to a specified person to conduct specified activities at a specified location. This type of permit does not authorize an activity by a class of persons or the public in general.
- (25) "In the Dry" means in such a manner that no equipment or dredged material is in contact with the stream or wetland and that the soil water boundary is not disturbed by equipment or that no infiltration is pumped to the stream from the dredge site.
- (26) "Minimal Impacts" means an activity for which the scope is very limited in area, the impact is very short in duration, and has no impact to waters just downstream of the location of the activity. Examples of activities with 'minimal impacts' include, but are not limited to, (1) minor channel changes associated with bank stabilization; and (2) an activity typically authorized by General Permit, but which requires an Individual Permit because the project falls under one of the listed exclusions.

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- (27) "Minor Road Crossing" is a bridged or culverted roadway fill across a stream or river which results in the alteration of 200 linear feet or less of stream bed or shoreline.
- (28) "Mitigation" means compensating for impacts in regulated areas as provided by Rule 1200-4-7-.04(7).
- (29) "Practicable alternative" is an alternative that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
- (30) "Resource Values" are the benefits provided by the water resource. These benefits include, but are not limited to, the ability of the water resource to:
- (a) filter, settle and/or eliminate pollutants;
 - (b) prevent the entry of pollutants into downstream waters;
 - (c) assist in flood prevention;
 - (d) provide habitat for fish, aquatic life, livestock and water fowl;
 - (e) provide drinking water for wildlife and water fowl;
 - (f) provide and support recreational uses; and
 - (g) provide both safe and adequate quality and quantity of drinking water.
- (31) "Sediment" means soil or its constituents that has been deposited in water, is in suspension in water, is being transported, or has otherwise been removed or disturbed from its site of origin.
- (32) "Sedimentation or Siltation" means the process by which sediment is deposited in or by the waters of the State.
- (33) "Settling Basin" means a prepared storage area constructed to trap and store sediment from erodible areas in order to protect any streams below the construction areas from excessive siltation; an impoundment that accumulates transported sediment and has provisions for a principal spillway; a reservoir which retains high flows sufficiently to cause deposition of transported sediment.
- (34) "Stabilize" means the proper placing, grading, and/or covering of soil, rock, or earth to insure their resistance to erosion, sliding or other movement.
- (35) "Stream" means all waters of the State on the surface of the ground except wet weather conveyances; streams include, but are not limited to, creeks, rivers, canals, and tributaries.
- (36) "Structure" means any building, pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, mooring structure, moored floating vessel, piling, aid to navigation, bridge, culvert or any other obstacle or obstruction.
- (37) "Utility Line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication.

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- (38) "Water Dependent" describes an activity that requires location in or adjacent to surface waters or wetlands in order to fulfill its basic purpose.
- (39) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- (40) "Wetland Dependent" means that the location of a project or conducting an activity in a wetland is essential to fulfill the purpose of the project. Examples of such projects are fish and wildlife management, nature trails, wildlife observation points, etc.
- (41) "Wet Weather Conveyances" are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, and whose channels are above the groundwater table, and which do not support fish or aquatic life, and are not suitable for drinking water supplies.
- (42) Terminology not specifically defined herein shall be defined in accordance with the Tennessee Water Quality Control Act of 1977, T.C.A. §69-3-101 et seq., and the rules adopted thereunder.

Authority: T.C.A. §69-3-105(b), §69-3-108

1200-4-7-.04 PERMITS

(1) Application for a Permit.

- (a) Any person who plans to engage in any of the activities outlined in §69-3-108 must obtain a permit from the Commissioner to lawfully engage in such activity. There are three (3) types of permits: Individual Permits; §401 Water Quality Certifications; and General Permits. An activity requiring a permit may be authorized by either an Aquatic Resource Alteration Permit or §401 Water Quality Certification depending on whether the activity requires a §404 permit from the United States Army Corps of Engineers (Corps). There are several types of General Permits: (1) a General Permit that authorizes the implementation of the activity in accordance with all the terms and conditions of the General Permit without prior notice and approval from the Commissioner; (2) a General Permit which requires the applicant notify TDEC of the planned activity prior to implementing the activity in accordance with the terms and conditions of the General Permit; and (3) a General Permit which requires the applicant to notify the Commissioner of the planned activity and receive approval from the Commissioner prior to implementing the activity in accordance with the terms and conditions of the General Permit. Certain of the General Permits authorize an activity that is authorized by a Nationwide Permit of the U.S. Corps of Engineers and therefore serve as a §401 Certification. Persons need not file an application with the Commissioner if they are conducting an activity pursuant to a General Permit that does not require Notice or approval. Persons who desire to implement an activity pursuant to a General Permit which requires Notice or Notice and prior approval, must submit the necessary documentation required by the General Permit prior to implementing the planned activity in accordance with the terms and conditions of the General Permit. A person must file an application for an Individual Permit or for a §401 Water Quality Certification with the Department, in accordance with paragraphs (3) and (4) of this rule, to implement any activity that is not authorized by a General Permit. All General Permits in effect as of the date of this Rule shall continue in effect, and are not revoked by these Rules.

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- (b) The application to the Commissioner for certification of activities which require §404 permits from the United States Army Corps of Engineers (Corps) shall be the application filed with the Corps. The Joint Public Notice which shall be issued by the Corps, describes the activity and notifies the general public of the application for the §404 permit and state certification and of the public's right to submit comments and requests for public hearing. If the Commissioner determines that additional notice to the public is required, the Department will issue a public notice in accordance with its procedures. If further information is required for project evaluation, the Commissioner may request it from either the applicant or the Corps.

(2) General permits..

The Commissioner may use General Permits to authorize alterations to state waters for specific categories of activities that are substantially similar in nature within the state or other specified geographical areas. When the Commissioner determines that a category or activity is suitable for coverage by a General Permit, or that substantive modification of existing General Permits is consistent with §69-3-108 of the Tennessee Water Quality Control Act of 1977, the Commissioner will provide notice of and conduct a minimum of one (1) public hearing. The public notice will contain the relevant information, as set forth in part (5)(c). TDEC will distribute the public notice to interested persons who have requested TDEC notify them of ARAP applications and by posting on the TDEC website. Interested persons may submit written comments on the General Permit within thirty (30) days of the public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination to issue a General Permit.

(3) §401 Water Quality Certification.

- (a) General. Any person who plans to engage in any of the activities outlined in §404 of the Federal Clean Water Act must obtain a federal permit as well as either a state permit or a state water quality certification under §401 of the Clean Water Act to lawfully engage in such activity in the State of Tennessee. Section 401 of the Federal Clean Water Act requires the Commissioner to certify that the issuance of the federal §404 permit meets the requirements of sections of the Federal Clean Water Act and the Water Quality Control Act. Persons must make application for the planned activity with the Army Corps of Engineers for an individual §404 permit or make use of a Corps of Engineers' nationwide permit.
- (b) An individual §404 permit. Where the activity requires an individual §404 permit, the application filed with the Army Corps of Engineers will serve as the application for either the state permit or the state §401 certification. The applicant must file the completed federal application with TDEC for the Commissioner to process and evaluate. The Commissioner will review a completed application and make a determination whether to issue a §401 Water Quality Certification. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination, including an evaluation of practicable alternatives. The practicable alternatives analysis required by this part may be satisfied by the applicant's submittal to the Division of a practicable alternatives evaluation for the proposed activity which has been submitted to the Army Corps of Engineers. For activities that may result in degradation of Exceptional Tennessee Waters, the alternatives analysis shall include a discussion of the feasibility of all potential alternatives, plus the social and economic considerations and environmental consequences of each consistent with Chapter 1200-4-3-.06.
- (c) A nationwide permit. Where the activity can be authorized by a Corps of Engineers nationwide permit, the §401 certification can be obtained through the use of a state general

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permit, if applicable, or an individual permit pursuant to paragraph (4) of this rule. If the Commissioner issues a §401 Certification, the §401 Certification is the state permit.

(4) Individual Permits.

- (a) Persons who plan to engage in any activity that requires an Aquatic Resource Alteration Permit which is not governed by a General Permit or a §401 Water Quality Certification, must submit an application to the Commissioner for review and approval prior to implementing the planned activity. The Commissioner will review a completed application and make a determination whether to issue an Individual Permit. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination. The applicant shall assess the practicable alternatives for a planned activity.
- (b) An applicant shall describe the proposed project including the use of technical terms in the definition section of this part where relevant. The sketch or plans and specifications submitted with the application shall describe the method for implementation of the planned activity. Where the proposed activity would result in an appreciable permanent loss of resource value, the applicant must propose adequate mitigation actions so that there is no overall net loss of state water resource values. The applicant shall set forth in the application a brief summary of the practicable alternatives considered to implement the proposed activity. If the activity would result in degradation of Exceptional Tennessee Waters, the alternatives analysis shall include as a part of the application a discussion of the feasibility of all potential alternatives, plus the social and economic considerations and environmental consequences of each consistent with Chapter 1200-4-3-.06 and the individual must comply with Section 7 of this Part.
- (c) An Individual Permit is required for water withdrawals which will or will likely result in alteration of the properties of the source stream.
 - 1. Persons proposing to withdraw water from waters of the state in a manner which will or will likely result in an alteration of the properties of the source stream, shall file an application with the Department which includes the following minimum information:
 - (i) proposed withdrawal rates and volumes;
 - (ii) proposed withdrawal schedule; and
 - (iii) flow data of the source stream (if free flowing).
 - 2. Where a permit for water withdrawal is required, the Commissioner shall establish permit conditions which are protective of the source stream's resource value. These conditions may include flow levels below which no withdrawal may occur. The Commissioner may also establish a maximum withdrawal rate in order to maintain the natural flow fluctuation characteristics of the source stream.

(5) Public Notice and Participation.

- (a) An ARAP Individual Permit or a §401 Certification requires the issuance of Public Notice seeking public participation and comment on the planned activity. However, Public

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Notice is not required for an activity authorized by General Permit since Public Notice is provided pursuant to part (2) of this part. Each completed application shall be subject to the public notice and participation requirements of Part (b) of this part with the following exceptions:

1. §401 Certification. The Department's procedure for issuing public notice for certification of an application for a federal license or permit pursuant to §401 of the Clean Water Act may be either a public notice issued jointly with the Corps and distributed in accordance with federal requirements, or a public notice issued by the Department. Such notice will describe the activity, advise the public of the scope of certification, their rights to comment on the proposed activity and to request a public hearing. The notice will also inform the public to whom they should send their requests and comments.
 2. Minimal impact activities. For activities that are projected to have only minimal impacts to state waters, which can be readily addressed, the Commissioner may utilize a twenty (20) day public notice period.
 3. When the Commissioner determines that a proposed permit modification will not materially change water quality aspects of the project, or will result in an improvement of water quality, as compared to the originally permitted activity, a permit may be modified without public notice.
 4. Where the Commissioner determines an emergency situation exists, a permit for remedial action may be issued without prior public notice and participation. The emergency permit shall be advertised by public notice, however, no later than twenty (20) days after issuance. The remedial actions allowed shall be limited to those necessary to remedy the emergency.
- (b) Upon receipt of a completed ARAP application, the Commissioner will review and evaluate the proposed activity or project to make a determination whether the activity would require an Individual Permit, as described in (4) of this Part. In order to inform interested and potentially interested persons of the proposed activity, a Public Notice seeking public participation and comment on the activity will be given.
1. The Public Notice will include the following information:
 - (i) Name, address, and telephone number of the applicant;
 - (ii) Name and address of TDEC contact person;
 - (iii) A brief description of the proposed activity;
 - (iv) A brief description of the scope of the proposed activity;
 - (v) The location of the state waters impacted by the proposed activity;
 - (vi) A sketch or detailed description of the location of the proposed activity and the subject waters of the state;
 - (vii) The purpose of the proposed activity;
 - (viii) The watershed of the subject waters;

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- (ix) A description of the conditions of the subject waters and the watershed, (e.g., physical conditions of the waters, quality of the waters such as size, flow, substrate, channel, etc.);
 - (x) The procedure to submit comments on the proposed activity;
 - (xi) The procedure for requesting a public hearing; and
 - (xii) A brief description of the procedure for the Commissioner to make a final determination to issue a permit.
2. The approved Public Notice shall be distributed to interested persons and shall be circulated within the geographical area of the proposed activity as follows:
- (i) TDEC will distribute the approved Public Notice to interested persons who have requested TDEC notify them of ARAP applications and by posting on the TDEC website.
 - (ii) The Applicant shall distribute the approved Public Notice to the neighboring landowners by publishing in a local newspaper of general circulation for linear projects such as highways or cross-country pipelines or by posting a sign within view of a public road in the vicinity of the proposed project site as specified by the Division for other projects. The sign shall contain those provisions as specified by the Division. The sign shall be of such size that is legible from the public road. Also, the sign shall be maintained for at least thirty (30) days following distribution of the approved Public Notice.
 - (iii) The applicant shall provide certification to the Division of compliance with item (ii).
- (c) A copy of the public notice shall be sent to any person who specifically requests one. Interested persons may submit written comments on the proposed activity within thirty (30) days of public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination to issue a permit.
- (d) Interested persons, including the applicant, may request, in writing, that the Commissioner hold a public hearing on any application. Said request from interested persons must be filed no later than the end of the period allowed for public comment, and must indicate the interest of the party filing it, must concisely state the water quality issues being raised, and the reasons why a hearing is warranted. If there are water quality issues and significant public interest in having a hearing, the Commissioner shall hold one in the geographical area of the proposed activity. No less than thirty (30) days in advance of the hearing, public notice of it shall be circulated at least as widely as was notice of the application. The Commissioner will distribute notice of the public hearing as set forth in 2. (i) above, and by publishing in a local newspaper. The notice shall cite the date, time and place of the public hearing, a statement of the issues raised by the person requesting the hearing, and the purpose of the public hearing.
- (6) Permit Evaluation Criteria.

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- (a) Some activities may not be entitled to a permit. When a permit is granted, it shall require compliance with all provisions of the Act, the regulations adopted pursuant to the Act, and any special terms or conditions the Commissioner determines are necessary to fulfill the purposes or enforce the provisions of the Act.
- (b) A permit may be modified, suspended, or revoked for cause by the Commissioner upon such notice to the permittee as required by law. Permits for activities that have been completed are not subject to modification. If a modification results in a less restrictive permit, then public notice and opportunity for hearing must be given prior to modification. Cause shall include, but not be limited to the following:
 - 1. violation of any terms or conditions of the permit;
 - 2. obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
 - 3. causing a condition of pollution;
 - 4. violation(s) of the Act or other environmental statutes;
 - 5. a change in the Act or regulations that substantively impacts the content of the permit;
 - 6. a change in the Federal Clean Water Act that substantively impacts the content of the permit; and
 - 7. a significant change of the physical condition(s) of the site or the waters.
- (c) The Act requires that no activity be authorized by the Commissioner unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value. Further, when a proposed alteration would result in degradation of Exceptional Tennessee Waters, the project must be found to be socially or economically justified pursuant to Chapter 1200-4-3-.06. In a situation in which an applicant proposes mitigation that would not result in no overall net loss, or in which a project that would result in degradation of Exceptional Tennessee Waters is found not to be socially or economically justified pursuant to Chapter 1200-4-3-.06, the Commissioner shall not issue the permit unless the applicant redesigns the project to avoid impacts, minimize them, or provide mitigation as provided in paragraph (7) so that the redesigned project would result in no net loss of resource value or no degradation of Exceptional Tennessee Waters pursuant to Chapter 1200-4-3-.06. In making a decision on a permit application, the Commissioner shall determine the lost resource value associated with a proposed impact and the resource value of any proposed mitigation and shall consider the following factors:
 - 1. direct loss of stream length, waters, or wetland area due to the proposed activity;
 - 2. direct loss of in-stream, waters, or wetlands habitat due to the proposed activity;
 - 3. impairment of stream channel stability due to the proposed activity;
 - 4. diminishment in species composition in any stream, wetland, or state waters due to the proposed activity;

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5. direct loss of stream canopy due to the proposed activity;
 6. whether the proposed activity is reasonably likely to have cumulative or secondary impacts to the water resource;
 7. conversion of unique or high quality waters as established in Rule 1200-4-3-.06 to more common systems;
 8. hydrologic modifications resulting from the proposed activity;
 9. the adequacy and viability of any proposed mitigation including, but not limited to, quantity, quality, likelihood of long term protection, and the inclusion of upland buffers;
 10. quality of stream or wetland proposed to be impacted;
 11. whether the state waters are assessed as not fully supporting classified uses; whether the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters, or waters identified as high quality waters as defined in Rule 1200-4-3-.06, known as Tier II waters; whether the activity is located in a waterway which has been identified by the Department as having contaminated sediments; and whether the activity will adversely affect species formally listed in State and Federal lists of threatened or endangered species; and
 12. any other factors relevant under the Act.
- (d) All permits which require mitigation of impacts shall contain conditions requiring that the mitigation is performed properly, performed in a timely manner and is adequately maintained.
- (7) Mitigation.
- (a) Mitigation of state waters other than wetlands.
- If an applicant proposes an activity that would result in an appreciable permanent loss of resource value of a state water, the applicant must provide mitigation which results in no overall net loss of resource values. The applicant shall provide the Commissioner with a time schedule for completion of all mitigation measures for approval. Further, for any mitigation involving the relocation or re-creation of a stream segment, to the extent practicable, the applicant shall complete the mitigation before any impact occurs to the existing state waters. Mitigation measures include, but are not limited to:
1. Restoration of degraded stream reaches and/or riparian zones;
 2. New (relocated) stream channels;
 3. Removal of pollutants from and hydrologic buffering of stormwater runoff; and
 4. Any other measures which have a reasonable likelihood of increasing the resource value of a state water.

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The Commissioner will assess the proposed mitigation to assure there is no overall net loss of resource value. The mitigation measures or actions should be prioritized in the following order: restoration, enhancement, re-creation, and protection.

(b) Mitigation of Wetlands.

1. If an applicant proposes an activity that would result in an appreciable permanent loss of resource value of wetlands, the applicant must provide mitigation, which results in no overall net loss of resource value. The applicant shall provide the Commissioner with a time schedule for completion of all mitigation measures for approval. Further, for any mitigation involving the enhancement or preservation of existing wetlands, to the extent practicable, the applicant shall complete the mitigation before any impact occurs to the existing state waters. For any mitigation involving restoration or creation of a wetland, to the extent practicable, the mitigation shall occur either before or simultaneously with impacts to the existing state waters. Mitigation for impacts to wetlands are prioritized as follows:
 - (i) Restoration of a previously degraded or impacted wetland (with emphasis on prior converted areas) on-site or in the immediate project area;
 - (ii) Restoration, including mitigation banking, off-site but within the eight digit United States Geological Survey hydrological unit in which the project is located;
 - (iii) Restoration, including mitigation banking, outside of the eight digit United States Geological Survey hydrological unit in which the project is located;
 - (iv) Creation of wetlands on-site or in the immediate project area;
 - (v) Creation of wetlands off-site;
 - (vi) Enhancement of existing wetlands;
 - (vii) Preservation of existing wetlands; or
 - (viii) A combination of any of the above activities.
2. The ratio of acres required for wetland mitigation should not be less than 2:1 for restoration activities; 4:1 for creation and enhancement; and 10:1 for preservation. Alternatively, the applicant may propose and utilize, subject to the Division's approval, best professional judgment ratios. The best professional judgment ratios shall be based on the resource value and functions of the affected wetland, resource value of the mitigation, and the likelihood of success of the mitigation.
3. All wetland mitigation projects shall include a monitoring and reporting program to document timely achievement of a successful mitigation wetland and remedial actions to correct any deficiency.

(8) Duration and Re-issuance of Permits.

- (a) Each permit issued shall have a fixed term not to exceed five (5) years.
- (b) Re-issuance of permits is not required for one-time alterations such as construction, as long as the alterations are completed within the time limit established by permit.

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- (c) For on-going alterations, such as water withdrawals, any permittee who wishes to continue the permitted activity after the expiration date of the permit must make application at least ninety (90) days prior to its expiration date.
- (d) The Commissioner shall follow the procedures for public notice and participation detailed in paragraph (4), above, regarding each application for re-issuance of a permit.
- (9) Review of Permit Denials, Suspensions, Revocations, Terms and Conditions.

Permittees and applicants for permits who disagree with the denial, suspension or revocation of a permit or the terms and conditions of a permit are entitled to review of the Commissioner's decision by the Water Quality Control Board pursuant to §69-3-105. Any action taken by the Commissioner regarding a permit remains in effect unless and until an order of the Water Quality Control Board or a reviewing court becomes final.

Authority: *T.C.A. §69-3-105(b), §69-3-108*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2005. (10-46)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules and new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-107. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 16th day of December, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-6-3-.12 Referral of Cultures to the Department of Health, is amended by deleting subparagraph (1) (o) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (1) (p) and (1) (q) and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraphs (1) (o), (1) (p) and (1) (q) shall read:

- (1) (o) Escherichia coli O157
- (1) (p) Shiga-like toxin producing Escherichia coli non-O157 (STEC)
- (1) (q) Shiga-like toxin positive stools and/or EIA positive broth for shiga-like toxin

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-107.

Rule 1200-6-3-.16 Alternate Site Testing, is amended by deleting part (1) (b) 2. in its entirety and substituting instead the following language, so that as amended, the new part (1) (b) 2. shall read:

- (1) (b) 2. For all other tests not included on part 1200-6-3-.16(1)(b)1. above, approval shall be made only through an examination hearing process of the Board. After the hearing before the Board, a facility that receives approval for an instrument/method for identified personnel and/or department, unless the facility wants to change or add personnel or departments, the addition of analytes to the approved instrument/method does not require appearance before the Board and may be accomplished by submitting written notification to the Board's administrative office.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of October, 2005. (10-19)

RULEMAKING HEARINGS

BOARD OF MEDICAL EXAMINERS - 0880 COMMITTEE ON PHYSICIAN ASSISTANTS

There will be a hearing before the Tennessee Board of Medical Examiners' Committee on Physician Assistants to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-101, 63-19-104, 63-19-102, 63-19-105, 63-19-201, and Public Chapter 286 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 20th day of December, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0880-3-.19 Committee Members, Officers, Consultants, Records, Declaratory Orders and Screening Panels, is amended by deleting paragraph (6) in its entirety and substituting instead the following language, so that as amended, the new paragraph (6) shall read:

- (6) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

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

Rule 0880-10-.19 Committee Members, Officers, Consultants, Records, Declaratory Orders and Screening Panels, is amended by deleting paragraph (6) in its entirety and substituting instead the following language, so that as amended, the new paragraph (6) shall read:

- (6) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

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

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NEW RULE

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0880-3-.24 Physician Assistant Professional Corporations and Physician Assistant Professional Limited Liability Companies

0880-3-.24 PHYSICIAN ASSISTANT PROFESSIONAL CORPORATIONS AND PHYSICIAN ASSISTANT PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Physician Assistant Professional Corporations (PAPC) – Except as provided in this rule Physician Assistant Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A PAPC need not file its Charter or its Annual Statement of Qualifications with the Committee.
 - (b) Ownership of Stock – Only the following may form and own shares of stock in a foreign or domestic PAPC doing business in Tennessee:
 1. Physician Assistants licensed pursuant to Tennessee Code Annotated Title 63, Chapter 19 or licensed in another state; and/or
 2. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9 or licensed in another state; and/or
 3. A foreign or domestic general partnership, PAPC or PAPLLC in which all partners, shareholders, members or holders of financial rights are physician assistants licensed pursuant to Tennessee Code Annotated Title 63, Chapter 19 to practice as physician assistants in Tennessee or physician assistants licensed by other states, or composed of entities which are directly or indirectly owned by such licensed physician assistants; and/or
 4. A foreign or domestic general partnership, or Medical Professional Corporation in which a majority of shares are owned by physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities in which a majority of shares are directly or indirectly owned by such physicians; and/or
 5. A foreign or domestic general partnership, or Medical Professional Limited Liability Company in which a majority of the members or holders of financial rights are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities in which a majority of the members or holders of financial rights are physicians.
 - (c) Officers and Directors of Physician Assistant Professional Corporations -
 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a Physician Assistant Professional Corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:

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- (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
 - 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a Physician Assistant Professional Corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a PAPC.
- (d) Practice Limitations
- 1. Engaging in, or allowing another physician assistant incorporator, shareholder, officer, or director, while acting on behalf of the PAPC, to engage in, practice as a physician assistant in any area or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 0880-3-.13 and/or Rule 0880-3-.15 (1) (a).
 - 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PAPC.
 - 3. Nothing in these rules shall be construed as prohibiting a PAPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of sound judgment by the physician assistant incorporators, directors, officers, shareholders, employees or contractors of the PAPC who are practicing as physician assistants as defined by Tennessee Code Annotated, Section 63-19-102.
 - 4. Nothing in these rules shall be construed as prohibiting a physician assistant from owning shares of stock in any type of professional corporation other than a PAPC so long as such ownership interests do not interfere with the exercise of sound judgment by the physician assistant while practicing as a physician assistant as defined by Tennessee Code Annotated, Section 63-19-102.
- (2) Physician Assistant Professional Limited Liability Companies (PAPLLC) - Except as provided in this rule Physician Assistant Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings - Articles filed with the Secretary of State shall be deemed to be filed with the Committee and no Annual Statement of Qualifications need be filed with the Committee.
 - (b) Membership - Only the following may be members or holders of financial rights of a foreign or domestic PAPLLC doing business in Tennessee:

RULEMAKING HEARINGS

1. Physician Assistants licensed pursuant to Tennessee Code Annotated Title 63, Chapter 19 or licensed in another state; and/or
2. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9 or licensed in another state; and/or
3. A foreign or domestic general partnership, PAPC or PAPLLC in which all partners, shareholders, members or holders of financial rights are physician assistants licensed pursuant to Tennessee Code Annotated Title 63, Chapter 19 to practice as physician assistants in Tennessee or physician assistants licensed by other states, or composed of entities which are directly or indirectly owned by such licensed physician assistants; and/or
4. A foreign or domestic general partnership, or Medical Professional Corporation in which a majority of shares are owned by physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities in which a majority of shares are directly or indirectly owned by such physicians; and/or
5. A foreign or domestic general partnership, or Medical Professional Limited Liability Company in which a majority of the members or holders of financial rights are physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6 or 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities in which a majority of the members or holders of financial rights are physicians.

(c) Managers, Directors or Governors of a PAPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a physician assistant professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
2. Only persons who are eligible to form or become members or holders of financial rights of a physician assistant professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a PAPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another physician assistant member, officer, manager, director, or governor, while acting on behalf of the PAPLLC, to engage in, practice as a physician assistant in any area or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the professional ethics enumerated in Rule 0880-3-.13 and/or Rule 0880-3-.15 (1) (a).
2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PAPLLC.

RULEMAKING HEARINGS

3. Nothing in these rules shall be construed as prohibiting a PAPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of sound judgment by the physician assistant members or holders of financial rights, governors, officers, managers, employees or contractors of the PAPLLC who are practicing as physician assistants as defined by Tennessee Code Annotated, Section 63-19-102.
 4. Nothing in these rules shall be construed as prohibiting a physician assistant from being a member of any type of professional limited liability company other than a PAPLLC so long as such membership interests do not interfere with the exercise of sound judgment by the physician assistant while practicing as a physician assistant as defined by Tennessee Code Annotated, Section 63-19-102.
 5. All PAPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Committee a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Committee shall follow to notify the attorney general that a PAPC or a PAPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Committee on the registered agent of the PAPC and/or PAPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the PAPC and/or PAPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Committee's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Committee finds that the PAPC and/or PAPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the PAPC and/or PAPLLC, through its agent(s), shall appear before the Committee at the time, date, and place as set by the Committee and show cause why the Committee should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Committee shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.

RULEMAKING HEARINGS

- (f) If, after the proceeding the Committee finds that a PAPC and/or PAPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Committee's satisfaction that the violation did not occur, the Committee shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (4) Violation of this rule by any physician assistant individually or collectively while acting as a PAPC or as a PAPLLC may subject the physician assistant(s) to disciplinary action pursuant to Rule 0880-3-.15 (1) (a).
- (5) The authority to own shares of stock or be members or holders of financial rights in a PAPC or a PAPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-101, 63-19-104, 63-19-102, 63-19-105, and Public Chapter 286 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of October, 2005. (10-13)

RULEMAKING HEARINGS

BOARD OF MEDICAL EXAMINERS - 0880 COMMITTEE FOR CLINICAL PERFUSIONISTS

There will be a hearing before the Tennessee Board of Examiners' Committee for Clinical Perfusionists to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-28-102, 63-28-110, 63-28-114, 63-28-117, 63-28-118, and Public Chapters 234 and 467 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 16th day of December, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 1st Flr., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0880-11-.19 Committee Members, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (4) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (7), so that as amended, the new catchline and the new paragraphs (4) and (7) shall read:

0880-11-.19 COMMITTEE MEMBERS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (4) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (7) Screening Panels - The Committee adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-28-114, 63-28-117, 63-28-118, and Public Chapter 234 of the Public Acts of 2005.

Rule 0880-11-.20 Advertising, is amended by deleting the language of the rule in its entirety and substituting the following language as new paragraphs (1) through (5):

RULEMAKING HEARINGS

- (1) **Policy Statement.** The lack of sophistication on the part of many in the health care community concerning clinical perfusion, the importance of the interests affected by the choosing of clinical perfusionists and the foreseeable consequences of unrestricted advertising by clinical perfusionists which is recognized to pose special possibilities for deception, require that special care be taken by clinical perfusionists to avoid misleading the health care community. Clinical perfusionists must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by clinical perfusionists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the health care community.
- (2) **Definitions**
 - (a) **Advertisement** – Informational communication to the health care community in any manner designed to attract attention to the clinical perfusionists which are licensed to practice in Tennessee.
 - (b) **Licensee** - Any entity holding a license as a clinical perfusionist in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) **Material Fact** - Any fact which a health care provider would need to know or rely upon in order to make an informed decision concerning the choice of clinical perfusionists to serve its particular needs.
 - (d) **Health Care Community** – Shall mean hospitals, ambulatory surgical treatment centers, medical practices, individual physicians, and other health care providers with legal authority to utilize clinical perfusionists.
- (3) **Advertising Content.** The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. §63-28-117(3).
 - (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

RULEMAKING HEARINGS

- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any materials fact or law without which the advertisement would be deceptive or misleading.
 - (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
 - (l) Any communication which creates an unjustified expectation concerning the potential results of any procedure.
 - (m) Failure to comply with the rules governing advertising records.
 - (n) Misrepresentation of a licensee's credentials, training, experience, or ability.
 - (o) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all clinical perfusion personnel practicing at a particular location shall:
 - 1. Upon request provide a list of all clinical perfusion personnel practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all clinical perfusion personnel practicing at that location.
 - (p) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (q) After thirty (30) days of the licensee's departure, the use of the name of any clinical perfusion personnel formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present licensees if the status of the former associate is disclosed in any advertisement or sign.
 - (r) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
- (4) Advertising Records and Responsibility

RULEMAKING HEARINGS

- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
- (b) Any and all advertisement are presumed to have been approved by the licensee named therein.
- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
- (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-114, 63-28-117, and Public Chapter 467 of the Public Acts of 2005.

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0880-11-.03 USE OF TITLES

0880-11-.03 USE OF TITLES. Any person who possesses a valid, unsuspended and unrevoked license issued by the Committee has the right to use the title "Licensed Clinical Perfusionist" or "L.C.P." and to practice perfusion, as defined in T.C.A. §§ 63-28-102. Violation of this rule or T.C.A. § 63-28-110 regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-102, 63-28-110, 63-28-114, 63-28-117, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of October, 2005. (10-28)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of new rules pursuant to Tenn. Code Ann., §§33-1-305 and 33-3-217. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., §4-5-204, and will take place in the Tennessee Room on the Ground Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243, at 8:30 a.m. CST on the 16th day of December, 2005.

Written comments will be considered if received by close of business, December 16, 2005 at the DMHDD Office of Planning, Legislation and Regulation, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243.

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

For a copy of the notice of rulemaking hearing, contact: Vicki Pillow, Office of Planning, Regulation and Legislation, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 253-3785.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0940-1-7 CONFLICT RESOLUTION

NEW RULES

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0940-1-7-.01 PURPOSE.

- (1) The purpose of this chapter is to provide a process for clear, orderly and expeditious conflict resolution between service recipients and licensees.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-4-103; 4-5-202 and 204; 33-1-302, 305 and 309; and Part 6, Chapter 2, Title 33, Tennessee Code Annotated.

0940-1-7-.02 SCOPE.

- (1) This chapter applies to all licensees of the Department for resolution of conflict(s) between a service recipient and a service provider.
 - (a) Conflicts include, but are not limited to:
 1. Health and safety concerns;
 2. Accessibility of service location;
 3. Provision or termination of services and supports except when a service or support is terminated because a third party payer refuses to continue to fund the service or support; and
 4. When the parent, legal guardian, legal custodian, legal caregiver of a child, 16 years of age or older with serious emotional disturbance or mental illness, believes that the child's decision to terminate treatment will have severe, adverse effects on the child.
 - (b) This conflict resolution process does not apply to:
 1. Grievances related to the family support program under Part 2, Chapter 5, Title 33, Tennessee Code Annotated;
 2. Location of service or support unless the location is inaccessible to the service recipient and/or service recipient's family, as appropriate;
 3. Request for discharge from a voluntary admission under Part 2, Chapter 6, Title 33, Tennessee Code Annotated;
 4. Decisions of an inpatient mental health facility's treatment review committee under T.C.A. §33-6-107;
 5. Decisions of a developmental disability service provider's behavior support committee and/or human rights committee;
 6. Commitment for involuntary treatment and/or mandatory outpatient treatment;
 7. Administration of electroconvulsive therapy or other convulsive therapy to a child;
 8. Rights under federal or other state laws, rules or court decisions; and
 9. Termination of service or support because a third party payer refuses to continue to fund the service or support.

Authority: T.C.A. §§4-4-103; 4-5-202 and 204; 33-1-302, 305 and 309; 33-6-206; 33-8-202; and Part 6, Chapter 2, Title 33, Tennessee Code Annotated.

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0940-1-7-.03 DEFINITION.

- (1) Legal representative means:
 - (a) The parent;
 - (b) The legal custodian;
 - (c) The legal caregiver under Title 34, Chapter 6, Part 3, who is acting on behalf of a child;
 - (d) The legal guardian of a service recipient who is an unemancipated child;
 - (e) The conservator or attorney-in-fact under a durable power of attorney for health care of an adult service recipient; or
 - (f) A surrogate decision maker under T.C.A. §§33-3-219-220, if the conflict is related to routine medical, dental or mental health treatment.

Authority: T.C.A. §§4-4-103; 4-5-202 and 204; 33-1-302, 305 and 309; 33-6-206; 33-8-202; Part 6, Chapter 2, Title 33, Tennessee Code Annotated; and Part 3, Chapter 6, Title 34, Tennessee Code Annotated.

0940-1-7-.04 DUTIES OF LICENSEES.

- (1) Every licensee of the department must develop and implement clear conflict resolution procedures that comply with this chapter. Such procedures must include informal meetings and an appeal process and must ensure that each conflict is resolved within the timeframe in 0940-1-7-.06.
- (2) The licensee must inform each service recipient and his/her legal representative of these procedures upon admission or when a legal representative is appointed.
- (3) Licensees must allow each service recipient or his/her legal representative to seek resolution of conflicts without intimidation, interference or retaliation.

Authority: T.C.A. §§4-4-103; 4-5-202 and 204; 33-1-302, 305 and 309; and Part 6, Chapter 2, Title 33, Tennessee Code Annotated.

0940-1-7-.05 RIGHTS OF SERVICE RECIPIENTS.

- (1) A service recipient who has capacity or the legal representative if the service recipient lacks capacity, may request conflict resolution procedures if he/she has been unable to resolve a conflict.
- (2) While conflict resolution is pending, provision of service or support must not cease over the objection of a service recipient with a developmental disability or his/her legal representative.
 - (a) Authority: T.C.A. §§4-4-103; 4-5-202 and 204; 33-1-302, 305 and 309; and Part 6, Chapter 2, Title 33, Tennessee Code Annotated.

RULEMAKING HEARINGS

0940-1-7-.06 PROCEDURES.

- (1) Conflict resolution must not exceed two (2) steps to finality: an informal meeting under 0940 – 1 – 7 – .06(10) and an appeal under 0940–1–7-.06(11).
- (2) A request for conflict resolution must be submitted to the licensee not more than thirty (30) calendar days after the occurrence of the matter, which is the basis for the request.
- (3) Requests for conflict resolution must contain:
 - (a) The basis for the request;
 - (b) The corrective action desired by the service recipient or his/her legal representative; and
 - (c) Sufficient facts or other information to begin the process.
- (4) A request may be submitted orally or in writing to the chief officer of the licensee or designee of the chief officer. If the request is given orally, it must be documented in the service recipient's record. A written request must be filed in the service recipient's record. No request may be denied because a specific form adopted by a licensee has not been used.
- (5) Conflict resolution proceedings may occur during business hours or at other mutually agreeable times.
- (6) Conflict resolution proceedings may be held at the licensee's location or at a mutually agreed upon place convenient to all parties.
- (7) Any proceeding under this chapter may be conducted by telephone conference call, computer-aided meeting processes or other electronic means in which all parties can participate.
- (8) A service recipient or his/her legal representative may represent himself/herself in the procedure or may designate another person to speak on his/her behalf.
- (9) If a service recipient or his/her legal representative intends to retain legal counsel, the service recipient or his/her legal representative must notify the licensee of the intent. If the service recipient or his/her legal representative retains legal counsel, the licensee may also have legal counsel present during the proceeding.
- (10) The first step in the conflict resolution procedure must be an informal meeting of involved persons:
 - (a) The informal meeting must be held no more than five (5) business days after the request.
 - (b) The meeting must include an informal discussion of issues raised.
 - (c) The outcome of the informal meeting must be documented in the service recipient's record with a copy of the outcome sent to all parties within two (2) business days after the meeting.
- (11) If the issue is not resolved during the informal meeting, the service recipient or his/her legal representative may request an appeal within five (5) business days of receipt of the documented outcome of the informal meeting.

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- (12) The chief officer or his/her designee must hear the appeal within ten (10) business days of the request.
 - (a) If the issue that is the basis for the request for conflict resolution directly involves the chief officer, a designee must be appointed.
 - (b) The appeal must include an informal discussion of the request for conflict resolution, the facts, and the recommendations of the involved parties and other individuals as determined by the chief officer or designee. The rules of civil procedure, evidence and administrative procedures do not apply to the appeal.
 - (c) The chief officer or designee must provide the parties a written statement of the resolution of the appeal within two (2) business days after the conclusion of the hearing. A copy of the written statement must be placed in the service recipient's record.
 - (d) The decision of the chief officer or designee is final and may not be appealed.
- (13) By mutual consent of the service recipient or his/her legal representative and the chief officer or his/her designee, the time limits in this rule may be extended.
- (14) The chief officer of the licensee must retain, in a separate file, a copy of any request for use of conflict resolution, the outcome, and any supporting documentation.
- (14) Authority: T.C.A. §§4-4-103; 4-5-202 and 204; 33-1-302, 305 and 309; Part 6, Chapter 2, Title 33, Tennessee Code Annotated; and Part 3, Chapter 6, Title 34, Tennessee Code Annotated.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2005. (10-48)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of new rules pursuant to Tenn. Code Ann., §§33-1-305 and 33-3-217. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., §4-5-204, and will take place in the Tennessee Room on the Ground Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243, at 10:00 a.m. CST on the 16th day of December, 2005.

Written comments will be considered if received by close of business, December 16, 2005, at the DMHDD Office of Planning, Legislation and Regulation, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243.

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

For a copy of the notice of rulemaking hearing, contact: Vicki Pillow, Office of Planning, Legislation, and Regulation, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 253-3785.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0940-3-8 USE OF ISOLATION, MECHANICAL RESTRAINT, AND PHYSICAL HOLDING RESTRAINT IN MENTAL HEALTH RESIDENTIAL TREATMENT FACILITIES

NEW RULES

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0940-3-8-.06	Authorization
0940-3-8-.07	Length of Authorization
0940-3-8-.08	Renewal
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0940-3-8-.10	Behavioral Criteria for Release
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0940-3-8-.16	Performance Improvement Activities
0940-3-8-.17	Training
0940-3-8-.18	Reporting

0940-3-8-.01 SCOPE.

- (1) This chapter applies to facilities and services licensed as a Mental Health Residential Treatment Facility for Children and Youth (Chapter 0940-5-37) or as a Mental Health Adult Residential Treatment Facility (Chapter 0940-5-17). Use of isolation, mechanical restraint or physical holding restraint in mental health treatment settings other than mental health residential treatment facilities is governed by other Department of Mental Health and Developmental Disabilities (DMHDD) rules. Use of chemical restraint is not permissible in mental health residential treatment facilities.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120.

0940-3-8-.02 PURPOSE.

- (1) Isolation, mechanical restraint, or physical holding restraint may be used only in an emergency safety situation to assure the physical safety of the service recipient or others nearby or to prevent significant destruction of property. Isolation, mechanical restraint, or physical holding restraint may be used only when all less intrusive or restrictive methods have been ineffective or determined to be inappropriate. Isolation, mechanical restraint, or physical holding restraint must be evaluated continuously and ended at the earliest possible time based on the assessment and evaluation of the service recipient's condition and behaviors. Isolation, mechanical restraint, or physical holding restraint must not be imposed in any form as a means of coercion, discipline, convenience of or retaliation by staff or for lack of staff presence or competency.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.356(a)(1) and (3)(ii).

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0940-3-8-.03 DEFINITIONS.

- (1) “Chemical restraint” means the use of a medication to restrict the service recipient’s freedom of movement for the emergency control of behavior. Chemical restraints are medications used in addition to, or in replacement of, the service recipient’s regular drug regimen to control extreme behavior during an emergency. The medications that comprise the service recipient’s regular medical regimen, including PRN medications, are not chemical restraints, even if their purpose is to control ongoing behavior.
- (2) “Conservator” means a person appointed by a court under the conservatorship laws in Title 34, Chapter 3, Tenn. Code Ann., or the Uniform Veterans’ Guardianship Law in Title 34, Chapter 5, Tenn. Code Ann., with authority to make decisions for an adult who lacks capacity to make informed health care decisions.
- (3) “Custodian” means an agency or individual appointed by a juvenile court to have full control of a service recipient who is a child.
- (4) “Durable power of attorney for health care” means a legal document authorized by Title 34, Chapter 6, Part 2, Tenn. Code Ann., that allows the attorney-in-fact to make decisions for health care.
- (5) “Emergency safety situation” means service recipient behavior that places the service recipient or others at serious threat of violence or injury or significant destruction of property if no intervention occurs and calls for the use of isolation, mechanical restraint, or physical holding restraint.
- (6) “Guardian” means a person appointed by a court under Title 34, Chapter 2, Tenn. Code Ann., with authority to make decisions for a person under eighteen (18) years of age who lacks capacity to make informed health care decisions.
- (7) “Hospital” means a licensed public or private inpatient treatment resource or hospital or a part of such treatment resource or hospital that provides inpatient care and treatment for persons with mental illness or serious emotional disturbance.
- (8) “Involuntarily committed service recipient” means a service recipient who is receiving services on an involuntary basis under Title 33, Chapter 6, Part 4 or 5, Tennessee Code Annotated, T.C.A. §§33-3-401—403, 412, 607, 33-7-301 and 303, or 37-1-128.
- (9) “Isolation” means the confinement of a service recipient alone in a room or an area where the service recipient is physically prevented from leaving. This definition is not limited to instances in which a service recipient is confined by a locked or closed door. Isolation does not include:
 - (a) the segregation of a service recipient for the purpose of managing biological contagion consistent with the Centers for Disease Control Guidelines;
 - (b) confinement to a locked unit or ward where other service recipients are present. Isolation is not solely confinement of a service recipient to an area, but separation of the service recipient from other persons; or
 - (c) time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of an individual service recipient from others.

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- (10) “Mechanical restraint” means the application of a mechanical device, material, or equipment attached or adjacent to the service recipient’s body, including ambulatory restraints, that the service recipient cannot easily remove and that restricts freedom of movement or normal access to the service recipient’s body. Mechanical restraint does not include the use of:
- (a) restrictive devices or manual methods employed by a law enforcement agent or other public safety officer to maintain custody, detention, or public safety during the transport of a service recipient under the jurisdiction of the criminal justice system or juveniles with charges in the juvenile justice system; or
 - (b) restraints for medical immobilization, adaptive support, or medical protection; or
 - (c) restrictive devices administratively authorized to ensure the safety of the service recipient or others when an involuntary committed service recipient must be transported.
- (11) “Mental health personnel” means a staff member who operates under the direct supervision of a licensed practitioner.
- (12) “Physical holding restraint” means the use of body contact by staff with a service recipient to restrict freedom of movement or normal access to his or her body. Physical holding restraint does not include the use of:
- (a) physical touch associated with prompting, comforting or assisting that does not prevent the service recipient’s freedom of movement or normal access to his or her body;
 - (b) physical escort for the temporary touching or holding of the hand(s), wrist(s), arm(s), shoulder(s) or back for the purpose of inducing the service recipient to walk to a safe location; or
 - (c) physical intervention for the temporary holding of the hand(s), wrist(s), arm(s), shoulder(s), or leg(s) which does not otherwise restrict freedom of movement or access to one’s body, for the purpose of terminating unsafe behavior.
- (13) “PRN” means authorization written to allow a medication or treatment to be given on an as-needed basis.
- (14) “Licensed Practitioner” means an individual approved by the mental health residential treatment facility to authorize the use of isolation or mechanical restraint and who is licensed by the Tennessee Health Related Boards as a:
- (a) physician (medical doctor or doctor of osteopathy);
 - (b) certified nurse practitioner;
 - (c) physician assistant;
 - (d) nurse with a master’s degree in nursing who functions as a psychiatric nurse;
 - (e) psychologist with health service provider designation;
 - (f) licensed professional counselor;

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- (g) senior psychological examiner;
 - (h) licensed clinical social worker; or
 - (i) licensed psychological examiner.
- (15) "Seclusion" means "Isolation."
- (16) "Service recipient," for purposes of this chapter, means an individual receiving mental health residential treatment services.
- (17) "Temporary caregiver" means an individual designated under T.C.A. §34-6-302 to make decisions as specified in §34-6-304 for a minor child as assigned by the parent or parents on the form provided by the Department of Children's Services for this purpose.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120.

0940-3-8-.04 USE OF ISOLATION, MECHANICAL RESTRAINT, AND PHYSICAL HOLDING RESTRAINT

- (1) Isolation, mechanical restraint or physical holding restraint may be used in mental health residential treatment facilities only in compliance with this chapter.

0940-3-8-.05 POLICIES AND PROCEDURES.

- (1) Any mental health residential treatment facility that uses isolation, mechanical restraint, or physical holding restraint must develop and employ policies and procedures that ensure compliance with this chapter. Policies and procedures must identify: approved techniques for the safe and appropriate application and removal of isolation, mechanical restraint, and physical holding restraint; devices, materials, and/or equipment that are approved by the mental health residential treatment facility for use as mechanical restraints; licensed practitioners by profession who are responsible for authorizing the isolation, mechanical restraint, or physical holding restraint; required elements in the order; and minimal physical and psychological elements that must be assessed. No policy or procedure may authorize the removal of clothing from a service recipient, other than that which is determined to place the service recipient or others at risk, in conjunction with the use of isolation, mechanical restraint, or physical holding restraint. Policies or procedures may not allow staff to use isolation, mechanical restraint, or physical holding restraint before receiving training under 0940-3-8-.17.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120; 42 CFR 483.356.

0940-3-8-.06 INITIATION OF ISOLATION, MECHANICAL RESTRAINT, OR PHYSICAL HOLDING RESTRAINT.

- (1) Before isolation, mechanical restraint, or physical holding restraint may be used, the service recipient must be assessed to determine the need for one of these interventions. The assessment must support that isolation, mechanical restraint, or physical holding restraint is necessary to assure the physical safety of the service recipient or a person nearby or avoid

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significant destruction of property and assure that all less restrictive interventions have been ineffective or determined to be inappropriate. This assessment is necessary upon initiation of isolation, mechanical restraint, or physical holding restraint at the time of the emergency, or, if initiated without the participation of a licensed practitioner, must be performed, face-to-face, within one hour of the initiation by a licensed practitioner. The assessment of need must be documented in the service recipient's record.

- (2) A licensed practitioner may initiate isolation, mechanical restraint or physical holding restraint. In the absence of a licensed practitioner, isolation, mechanical restraint, or physical holding restraint may be initiated by a licensed practical nurse, a registered nurse or by mental health personnel with a minimum of a bachelor's degree or two (2) years of full time equivalent experience in a mental health inpatient or mental health residential treatment facility. All staff who initiate the use of isolation, mechanical restraint, or physical holding restraint must have training in compliance with this chapter. A licensed practitioner who has been trained in the use of isolation, mechanical restraint, and physical holding restraint must be contacted immediately for authorization of the isolation, mechanical restraint, or physical holding restraint if a licensed practitioner did not initiate it.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120.

0940-3-8-.07 AUTHORIZATION.

- (1) Only a licensed practitioner who has been trained in the use of isolation, mechanical restraint, and physical holding restraint may authorize the use of isolation, mechanical restraint, or physical holding restraint. The authorization must be for the least restrictive intervention possible that is most likely to be effective.
- (2) All authorizations must specify isolation, mechanical restraint, or physical holding restraint. If mechanical restraint is authorized, the authorization must specify the type of restraint device(s) to be used and the number of points of restraint; the licensed practitioner's name and credentials; the date and time when the authorization was obtained; and the maximum length of time the intervention was authorized.
- (3) A licensed practitioner must see the service recipient to assess the need for isolation, mechanical restraint, or physical holding restraint within one (1) hour after initiation. No assessments to authorize the use of isolation, mechanical restraint, or physical holding restraint may be made by electronic means.
- (4) If the licensed practitioner who authorized the use of isolation, mechanical restraint, or physical holding restraint is not the service recipient's treating physician, the treating physician shall be consulted as soon as possible and the consultation must be documented in the service recipient's record. If the service recipient does not have a designated physician for treatment of mental illness or serious emotional disturbance, the mental health residential treatment facility's physician shall be consulted and the consultation must be documented in the service recipient's record.
- (5) If the authorization for restraint or isolation is verbal, the order must be received by a registered nurse or or a licensed practical nurse and signed by the ordering licensed practitioner within 24 hours of the authorization.
- (6) A new authorization is required if there is a change in the intervention utilized, including increasing the number of points of restraint or the application of additional restraint devices. If

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the use of isolation, mechanical restraint, or physical holding restraint has been discontinued, it may be used again only with a new authorization, even if a previously authorized time limit has not expired.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120; 42 CFR 483.358, 358(b), (c), (d), (g), (g)(1-3), (j), and 483.360.

0940-3-8-.08 LENGTH OF AUTHORIZATION.

- (1) Each authorization for isolation or mechanical restraint is limited to a maximum of four (4) hours for adults 18 years of age and older, two (2) hours for youth ages 9 through 17, and one (1) hour for children under age 9. Each authorization for physical holding restraint for any age service recipient is limited to a maximum of thirty (30) minutes.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.358(e).

0940-3-8-.09 RENEWAL.

- (1) A licensed practitioner may renew the original authorization, including a verbal authorization, if a service recipient continues to need isolation, mechanical restraint, or physical holding restraint beyond the time limit of the original authorization. Renewals must comply with 0940-3-8-.06 and 0940-3-8-.07. Under no circumstance can isolation, mechanical restraint, or physical holding restraint exceed twenty-four (24) continuous hours.
- (2) Isolation, mechanical restraint, and physical holding restraint cannot be authorized on a PRN basis or as a standing order. Mechanical restraint or physical holding restraint may not be used simultaneously with isolation.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.356(a)(2) and (4), 483.362(b) and 483.364(c).

0940-3-8-.10 ASSESSMENT.

- (1) Risk assessments must be completed at admission; updated when there is significant change in mental status, behavior, or physical/medical condition; documented in the service recipient's record and reviewed by the treatment team. The risk assessment must be completed by a licensed practitioner or mental health personnel with a minimum of a bachelor's degree.
- (2) The assessment must identify any specific situations or issues including: chronological and developmental age; size; gender; physical, medical, and psychiatric condition; personal history, including any history of physical and/or sexual abuse; and cultural issues that may trigger behavior that might require the use of isolation, mechanical restraint, or physical holding restraint.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120.

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0940-3-8-.11 BEHAVIORAL CRITERIA FOR RELEASE.

- (1) Behavioral criteria for release from isolation, mechanical restraint or physical holding restraint must be specified by a licensed practitioner who may authorize the use of isolation or mechanical restraint or physical holding restraint. In the absence of a licensed practitioner, the behavioral criteria must be specified by a licensed practical nurse, a registered nurse or by mental health personnel with a minimum of a bachelor's degree or two (2) years of full time equivalent experience in a mental health inpatient or mental health residential treatment facility. The behavioral criteria must be communicated to the service recipient as soon as possible during the isolation, mechanical restraint or physical holding restraint procedure and documented in the service recipient's record. Behavioral criteria for release must identify the behaviors necessary to no longer justify the use of isolation, mechanical restraint, or physical holding restraint. The isolation, mechanical restraint, or physical holding restraint must be terminated as soon as the behavioral criteria for release have been met.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120.

0940-3-8-.12 MONITORING AND ASSESSMENT OF CONTINUED NEED.

- (1) To continue the use of isolation, mechanical restraint, or physical holding restraint, there must be ongoing assessment of need that justifies the continued use. To continue use, the justification must indicate that the behavioral criteria for release have not been met. All results of monitoring must be documented in the service recipient's record. Use of isolation, mechanical restraint, or physical holding restraint must be monitored as follows:
 - (a) Isolation: Staff trained in monitoring isolation monitor a service recipient in isolation. The service recipient must be continuously monitored. Monitoring must be by direct visual observation.
 - (b) Mechanical Restraint: Staff trained in the monitoring of mechanical restraint must monitor a service recipient in mechanical restraint. The service recipient must be continuously monitored. Monitoring must be by direct visual observation and staff must remain in the immediate physical presence of and in the same room as the service recipient.
 - (c) Physical Holding Restraint: Staff trained in the monitoring of physical holding restraint monitor a service recipient in a physical holding restraint. The service recipient must be continuously monitored. A staff member who is trained in the monitoring of physical holding restraints must be present as an observer at all times while a service recipient is in a physical holding restraint.
 - (d) At intervals no greater than fifteen (15) minutes, staff must document visual observations of:
 1. behavior justifying continued need for isolation, mechanical restraint, or physical holding restraint;
 2. if applicable, the application of the mechanical restraint or physical holding restraint;
 3. respiration;

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4. negative effects of isolation, mechanical restraint, or physical holding restraint;
 5. any sign of distress; and
 6. if applicable, an evaluation of the fatigue of the staff member employing a physical holding restraint.
- (e) At intervals no greater than one (1) hour for isolation, mechanical restraint or physical holding restraint, the service recipient must be allowed to toilet and be offered fluids. For mechanical and physical holding restraint, the service recipient must also be checked for range of motion. Nourishment must be offered at routine meal and snack times. The facility must document the requirements of 0940-3-8-.12(e) in the service recipient's record.
- (f) At intervals no greater than thirty (30) minutes for physical holding restraint, or one hour for isolation or mechanical restraint, staff who may initiate isolation, mechanical restraint, or physical holding restraint must document an assessment of continued need for isolation, mechanical restraint, or physical holding restraint.
- (g) A service recipient must be released from isolation, mechanical restraint, or physical holding restraint when the need for the intervention no longer exists. Before the shift ends, a staff member who may initiate isolation, mechanical restraint, or physical holding restraint must document in the service recipient's record an assessment of the service recipient's behavior, mental and physical status at the time the service recipient is released, the time the isolation, mechanical restraint, or physical holding restraint began and ended, and the name of all staff involved.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120; 42 CFR 483.358(h), 483.358(h)(2) and (5), 483.362, 483.364, 483.364(b) and 483.364(b)(2).

0940-3-8-.13 LOCATION.

- (1) Isolation may be provided only in a clean, dry, temperate location and be free of potentially hazardous conditions from which the service recipient might harm himself or herself or others. Rooms used for isolation must allow staff full view of the service recipient in all areas of the room. Mechanical restraint must be imposed in a clean, dry, temperate area as private as possible.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120.

0940-3-8-.14 TERMINATION.

- (1) Isolation, mechanical restraint, or physical holding restraint must be terminated when the behavior justifying its use no longer exists or if the face-to-face assessments required do not occur. Any threat to a service recipient's physical health or emotional well-being requires immediate release.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305 and 1-308 and 33-3-120.

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0940-3-8-.15 NOTIFICATION.

- (1) Upon admission to the mental health residential treatment facility, both the incoming service recipient and the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 must be informed and provided a copy of the facility's policy regarding the use of isolation, mechanical restraint, and physical holding restraint during an emergency safety situation. If the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 is not available upon admission, information regarding the policy will be provided as soon as possible. This policy must be communicated in a way that is understood by the service recipient and his or her parent, guardian, temporary caregiver, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker, as appropriate. When necessary, the facility must provide interpreters or translators.
- (2) An acknowledgement, in writing, from the service recipient and the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 that he or she has been informed of the facility's policy on the use of isolation, mechanical restraint, and physical holding restraint in an emergency safety situation. The acknowledgement must be placed in the service recipient's record.
- (3) Contact information for the Disability Law & Advocacy Center of Tennessee (DLAC) must be provided to the service recipient or his or her parent, guardian, temporary caregiver, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker, as appropriate, upon admission to the facility.
- (4) The mental health residential treatment facility must notify the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 of the use of isolation, mechanical restraint, or physical holding restraint as soon as possible but no later than twelve (12) hours following initiation of the intervention. Notification and/or unsuccessful attempts to notify must be documented in the service recipient's record. The parent, guardian, temporary caregiver, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker, as appropriate, may choose to modify the notice requirements in a written agreement filed in the service recipient's record. Such individuals must be provided the opportunity to participate in a discussion with appropriate staff about the episode that precipitated the use of isolation, mechanical restraint or physical holding restraint.
- (5) The mental health residential treatment facility may notify other family members or significant others, with their agreement to be notified, as specified in 0940-3-8-.14, when a release has been signed by:
 - (a) the service recipient who is 16 years old or older, or
 - (b) the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child, or

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- (c) the conservator, attorney-in-fact under a durable power of attorney which authorizes health care or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.356(c), 483.356(c)(2)—(4), (d), 483.366 and 483.366(b).

0940-3-8-.16 INTERNAL REVIEWS.

- (1) The mental health residential treatment facility must provide and document three types of reviews.
 - (a) Service Recipient Review:
 - 1. A licensed practitioner or mental health personnel who can initiate isolation, mechanical restraint, or physical holding restraint must review the episode upon termination of the intervention with the service recipient and with his or her parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child, or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220, if available. The review must occur as soon as possible, but no later than twenty-four (24) hours after termination of isolation, mechanical restraint, or physical holding restraint. The review must address the episode, any identified reasons for the behavior, and identify ways to alleviate any related trauma. Staff must document in the service recipient's record that this review took place and must include the names of staff who were present, the names of any staff excused, and any changes to the service recipient's treatment plan as a result of the review. Documentation from the review may also be maintained in the mental health residential treatment facility records.
 - 2. If a review is clinically contraindicated, the rationale for the conclusion must be documented in the service recipient's record.
 - (b) Episode Review:
 - 1. Within twenty-four (24) hours of termination of isolation, mechanical restraint, or physical holding restraint, staff must review the episode to determine the circumstances requiring the use, how it might be addressed differently, alternative techniques that might have prevented the use, any procedures that need to be implemented to prevent recurrence, and the outcome of the episode. Any injury to the service recipient or staff during the implementation or use of the isolation, mechanical restraint, or physical holding restraint must be included in the review and a plan must be developed to prevent future injuries. The review must also address any need to change the service recipient's treatment plan, opportunities for performance improvements and any need for alleviation of staff trauma associated with the episode. The staff review must include staff involved in the episode and, if possible, other staff who witnessed or have knowledge about the episode or the service recipient. The mental health residential treatment facility supervisor

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or designee may, for good cause, allow an exception to the review within twenty-four (24) hours, but the review must be concluded within five (5) business days of the episode. Staff must document in the service recipient's record that the review occurred and must include the names of staff who were present, the names of any staff excused, and any changes to the service recipient's treatment plan as a result of the review. Documentation from the review may also be maintained in the mental health residential treatment facility records.

(c) Systematic Review:

1. The mental health residential treatment facility must develop and implement a process for systematic review of all isolation, mechanical restraint, or physical holding restraint episodes and the identification of trends of use of isolation, mechanical restraint, or physical holding restraint.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.370 and 483.370(c).

0940-3-8-.17 PERFORMANCE IMPROVEMENT ACTIVITIES.

- (1) The mental health residential treatment facility must engage in on-going performance improvement activities that focus on the reduction of the use of isolation, mechanical restraint, and physical holding restraint. Information obtained through the review processes under 0940-3-8-.15 must be considered, at least quarterly, in the identification of specific performance improvement activities and in the evaluation of the effectiveness of performance improvement activities.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308 and 33-3-120.

0940-3-8-.18 TRAINING.

- (1) The mental health residential treatment facility must identify specific staff, based on their job responsibilities, who may be involved in the use of isolation, mechanical restraint, or physical holding restraint. Staff must be appropriately trained and demonstrate competency in the correct application and safe usage of isolation, mechanical restraint, and physical holding restraint. Only trained staff who are qualified by education, training, and experience may train others. Staff training must include training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations. Staff must be trained and demonstrate competency before assuming direct care responsibilities that include the use of isolation, mechanical restraint, or physical holding restraint. The mental health residential treatment facility must assure that staff are trained and competent in the following areas:

(a) Upon being hired and every six months thereafter:

1. Specific techniques approved by the mental health residential treatment facility for the safe and appropriate application and removal of isolation, mechanical restraint, and physical holding restraint;

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2. Use of non-physical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;
3. Recognition of negative effects of use of isolation, mechanical restraint, and physical holding restraint, including signs of distress, and actions to take if negative effects or signs of distress occur;
4. Techniques to identify staff and service recipient behaviors, events, and environmental factors that may trigger emergency safety situations; and
5. Use of devices, materials, and/or equipment approved by the mental health residential treatment facility as mechanical restraints.

(b) Upon being hired and annually thereafter:

1. Medical/physical and psychological risks associated with the use of isolation, mechanical restraint, and physical holding restraint;
2. Mental health residential treatment facility policies and procedures regarding isolation, mechanical restraint, and physical holding restraint;
3. Needs and behaviors of the population served;
4. Liability and other legal issues;
6. Applicable state and federal law and rules; and
7. Procedures to address problems associated with the use of isolation, mechanical restraint, or physical holding restraint.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.376, 483.376(a)(1—3), 483.376(c)—(f).

0940-3-8-.19 MEDICAL TREATMENT FOR INJURIES AND REPORTING.

- (1) If a service recipient is injured as a result of the use of isolation, mechanical restraint, or physical holding restraint, staff must immediately obtain medical treatment. Staff must document in the service recipient's record all injuries that occur as a result of isolation, mechanical restraint, or physical holding restraint.
- (2) The mental health residential treatment facility must report serious occurrences that result from the use of isolation, mechanical restraint, or physical holding restraint to the Department of Mental Health and Developmental Disabilities (DMHDD), the Disability Law & Advocacy Center of Tennessee (DLAC), and the Centers for Medicare and Medicaid Services if applicable. Occurrences include a service recipient's death, serious injury, or suicide attempt and must be reported no later than close of business the next business day after the serious occurrence.

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- (3) The mental health residential treatment facility must notify immediately the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 when a serious injury occurs as the result of the use of isolation, mechanical restraint, or physical holding restraint.
- (4) Staff must document in the service recipient's record that appropriate entities have been notified, the date notified, and the name of the person spoken to or sent a notice.
- (5) In addition to any other required notices, each mental health residential treatment facility that uses isolation, mechanical restraint, or physical holding restraint must annually report information specified by the DMHDD as required under T.C.A. §§33-3-120 and 33-1-307.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 308, and 33-3-120; 42 CFR 483.372(c), 483.374(b), 483.374(b)(2) and 483.374(c).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2005. (10-49)

RULEMAKING HEARINGS

BOARD OF DISPENSING OPTICIANS - 0480

There will be a hearing before the Tennessee Board of Dispensing Opticians to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-14-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 21st day of December, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0480-1-.03, Necessity of Licensure is amended by adding the following language as new paragraph (4):

- (4) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Licensed Dispensing Optician" and to practice as a dispensing optician as defined in T.C.A. §§ 63-14-102. Violation of this rule regarding use of titles shall subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-102, 63-14-103, 63-14-104, and Public Chapter 467 of the Public Acts of 2005.

Rule 0480-1-.04, Qualifications for Licensure, is amended by deleting in its entirety the last sentence of subparagraph (3) (c) which is immediately following part (3) (c) 11., and is further amended by adding the following language as new subparagraph (3) (d):

- (3) (d) If the applicant holds an unrestricted dispensing optician license in another state, the length of time for that state's training and supervised experience requirements for initial licensure shall be considered as time toward fulfilling Tennessee's three (3) year requirement.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-1-.14, Apprenticeship Training Program, is amended by deleting paragraph (7) in its entirety:

Authority: §§ 4-5-202, 4-5-204, 63-14-101, and 63-14-103.

RULEMAKING HEARINGS

Rule 0480-1-.19, Board Meetings, Officers, Consultants, Records and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (8), so that as amended, the new catchline and the new paragraph (8) shall read:

0480-1-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (8) Screening Panels - The Board adopts, as if fully set out herein, Rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-223, 4-5-224, 4-5-225, 63-1-138, 63-14-101, 63-14-104, and Public Chapter 234 of the Public Acts of 2005.

Rule 0480-1-.20, Advertising, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1) through (6):

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning opticianry services, the importance of the interests affected by the choice of a dispensing optician and the foreseeable consequences of unrestricted advertising by dispensing opticians which is recognized to pose special possibilities for deception, require that special care be taken by dispensing opticians to avoid misleading the public. The dispensing optician must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by dispensing opticians is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a dispensing optician who is licensed to practice in Tennessee.
 - (b) Licensee - Any person holding a license to practice as a dispensing optician in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
 - (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

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(3) Advertising Fees and Services

- (a) Fixed Fees - Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
- (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
- (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
- (e) Time Period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 1. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.

(4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. §63-14-104.

- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
- (b) The misleading use of an unearned or non-health degree in any advertisement.
- (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.

RULEMAKING HEARINGS

- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any materials fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
- (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.

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- (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisement are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: *T.C.A. 4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-104, and Public Chapter 467 of the Public Acts of 2005.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of October, 2005. (10-03)

RULEMAKING HEARINGS

BOARD OF PODIATRIC MEDICAL EXAMINERS - 1155

There will be a hearing before the Tennessee Board of Podiatric Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 28th day of December, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1155-2-.01, Definitions, is amended by deleting the introductory language and substituting instead the following language, so that as amended the new introductory language shall read:

1155-2-.01 DEFINITIONS - As used in this chapter and in chapters 1155-3 and 1155-4, the following terms and acronyms shall have the following meanings ascribed to them:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-125, and Public Chapter 380 of the Public Acts of 2005.

Rule 1155-2-.03, Necessity of Certification, is amended by adding the following language as new paragraph (3) and renumbering the present paragraph as paragraph (4):

- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles and or initials "Podiatrist," "Podiatric Physician," "Doctor of Podiatry," "Doctor of Podiatric Medicine," "Doctor of Podiatric Medicine and Surgery," or "D.P.M." and to practice as a licensed podiatrist, as defined in T.C.A. §§ 63-3-101. Violation of this rule or T.C.A. § 63-3-119 (a) (15) regarding use of titles of shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, 63-3-107, 63-3-119, and Public Chapter 467 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 1155-2-.11, Retirement and Reactivation of License, is amended by deleting paragraph (5) in its entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-116, and Public Chapter 228 of the Public Acts of 2005.

Rule 1155-2-.12, Continuing Education, is amended by deleting paragraph (1) but not its subparagraphs, and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs shall read:

- (1) The Board requires each licensed podiatrist to complete fifteen (15) clock hours of continuing education each calendar year (January 1 – December 31).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-116, and Public Chapter 228 of the Public Acts of 2005.

Rule 1155-2-.19 Board Members, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (c) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (6) and (7), so that as amended, the new catchline, the new subparagraph (1) (c), and the new paragraphs (6) and (7) shall read:

1155-2-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, ADVISORY RULINGS AND SCREENING PANELS.

- (1) (c) A majority of the members of the Board shall at all times constitute a quorum.
- (6) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license or certificate issued pursuant to Chapter 3 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-3-202 (b) (2). The procedures for obtaining and issuance of advisory rulings are as follows:
 - (a) The licensee or certificate holder shall submit the request to the Board Administrative Office on the form contained in paragraph (6)(e) providing all the necessary information; and
 - (b) The request, upon receipt, shall be referred to the Board's administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board's consultant and advisory attorney; and
 - (c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and
 - (d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-3-202 (b) (2).
 - (e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:

RULEMAKING HEARINGS

BOARD OF PODIATRIC MEDICAL EXAMINERS
REQUEST FOR ADVISORY RULING

Date: _____

Licensee's Name: _____

Licensee's Mailing Address: _____

Licensee's E-Mail Address: _____

License Number: _____

1. The specific question or issue for which the ruling is requested:

2. The facts that gave rise to the specific question or issue:

— _____
— _____

3. The specific statutes and/or rules which are applicable to the question or issue:

— _____
— _____

Licensee's Signature: _____

—

Mail or Deliver to: Administrator
Board of Podiatric Medical Examiners
First Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, Tennessee 37247-1010

- (7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-1-124, 63-1-138, 63-3-106, 63-3-119, and Public Chapters 234 and 380 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 1155-2-.21 Podiatric Professional Corporations and Podiatric Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Podiatric Professional Corporations (PPC) – Except as provided in this rule Podiatric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A PPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic PPC doing business in Tennessee:
 1. Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or licensed in another state; and/or
 2. A foreign or domestic general partnership, PPC or PPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or podiatrists, orthotists, prosthetists, and pedorthists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in a PPC or be a member or holder of financial rights in a PPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
 - (c) Officers and Directors of Podiatric Professional Corporations -
 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by T.C.A. § 48- 101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a PPC.

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(d) Practice Limitations

1. Engaging in, or allowing another podiatric incorporator, shareholder, officer, or director, while acting on behalf of the PPC, to engage in, podiatric practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 1155-2-.13 and/or Tennessee Code Annotated, Section 63-3-119 (a) (4).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PPC.
 3. Nothing in these rules shall be construed as prohibiting a PPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatric incorporators, directors, officers, shareholders, employees or contractors of the PPC who are practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
 4. Nothing in these rules shall be construed as prohibiting a podiatrist from owning shares of stock in any type of professional corporation other than a PPC so long as such ownership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
- (2) Podiatric Professional Limited Liability Companies (PPLLC) – Except as provided in this rule Podiatric Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
 - (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 only the following may be members or holders of financial rights of a foreign or domestic PPLLC doing business in Tennessee:
 1. Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or licensed in other states; and/or
 2. A foreign or domestic general partnership, PPC or PPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or podiatrists, orthotists, prosthetists, and pedorthists licensed by other states or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts

RULEMAKING HEARINGS

of 2005 to either own shares of stock in a PPC or be a member or holder of financial rights in a PPLLC; and/or

(iii) A combination of professionals authorized by subparts (i) and (ii).

(c) Managers, Directors or Governors of a PPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a podiatric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
2. Only persons who are eligible to form or become members or holders of financial rights of a podiatric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a PPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another podiatrist member, officer, manager, director, or governor, while acting on behalf of the PPLLC, to engage in, podiatric practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the professional ethics enumerated in Rule 1155-2-.13 and/or Tennessee Code Annotated, Section 63-3-119 (a) (4).
2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PPLLC.
3. Nothing in these rules shall be construed as prohibiting a PPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatrist members or holders of financial rights, governors, officers, managers, employees or contractors of the PPLLC who are practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
4. Nothing in these rules shall be construed as prohibiting a podiatrist from being a member of any type of professional limited liability company other than a PPLLC so long as such membership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing podiatry as defined by Tennessee Code Annotated, Section, Section 63-3-101.
5. All PPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.

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- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a PPC or a PPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the PPC and/or PPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the PPC and/or PPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the PPC and/or PPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the PPC and/or PPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a PPC and/or PPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in a PPC or a PPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-3-106, 63-3-110, 63-3-119, and Public Chapters 286 and 380 of the Public Acts of 2005.

RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of October, 2005. (10-06)

RULEMAKING HEARINGS

BOARD OF PODIATRIC MEDICAL EXAMINERS - 1155

There will be a hearing before the Tennessee Board of Podiatric Medical Examiners to consider the promulgation of new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 28th day of December, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

NEW RULES

CHAPTER 1155-4

GENERAL RULES GOVERNING ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

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1155-4-.01 ORTHOTISTS.

- (1) An “orthotist” is an allied health professional who is specifically trained and educated to provide or manage the provision of a custom-designed, fabricated, modified and fitted external orthosis to an orthotics patient, based on a clinical assessment and a prescription from a health care practitioner authorized by law to write such prescriptions, to restore physiological function or cosmesis.
- (2) An “orthosis” is a custom-designed, fabricated, fitted or modified device to correct, support or compensate for a neuro-musculoskeletal disorder or acquired condition. “Orthosis” does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold without modification as “over-the-counter” items by a drug store, department store, corset shop, or surgical supply facility.
- (3) “Orthotics” is the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed health care practitioner authorized by law to issue such an order for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.02 PROSTHETISTS.

- (1) A “prosthetist” is an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, modified, and fitted external limb prosthesis to a prosthetic patient, based on a clinical assessment and a prescription from a health care practitioner authorized to write such prescriptions, to restore physiological function or cosmesis.
- (2) A “prosthesis” is a custom designed, fabricated, fitted, or modified device to replace an absent external limb for purposes of restoring physiological function or cosmesis. “Prosthesis” does not include artificial eyes, ears, or dental appliances, cosmetic devices or other devices that do not have a significant impact on the musculoskeletal functions of the body.
- (3) “Prosthetics” is the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed health care practitioner authorized by law to issue such order.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.03 PEDORTHISTS.

- (1) A “pedorthist” is an allied health professional who is specifically trained and educated to measure, design, fabricate, fit or service a pedorthic device, based on a clinical assessment and a prescription from a health care practitioner authorized to write such prescriptions, for the support or correction of disabilities caused by neuro-musculoskeletal diseases, injuries, or deformities.
- (2) The term “pedorthic device” includes therapeutic footwear, foot orthoses for use at the ankle or below, and modified footwear made for therapeutic purposes, as prescribed by a licensed health care

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practitioner authorized by law to issue such prescription. "Pedorthic device" does not include non-therapeutic accommodative inlays or non-therapeutic accommodative footwear, shoe modifications made for non-therapeutic purposes, unmodified, over-the-counter shoes, or prefabricated foot care products.

- (3) "Pedorthics" is the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a licensed health care practitioner authorized by law to issue such order for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.04 RESTRICTIONS ON THE PRACTICE OF ORTHOTISTS, PROSTHETISTS AND PEDORTHISTS.

- (1) A licensed orthotist, prosthetist or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed health care practitioner authorized to issue such an order.
- (2) A licensed orthotist, prosthetist, or pedorthist must provide services at a facility which has appropriate clinical and laboratory space and equipment to allow that licensee to provide comprehensive orthotic, prosthetic, or pedorthic care.
- (3) The scope of practice of a licensed orthotist, prosthetist, or pedorthist does not include the right to diagnose a medical problem or condition or the right to give medical advice as to the nature, cause, or treatment for the problem or condition for which the orthosis, prosthesis, or pedorthic device is being dispensed. However, the scope of practice of a licensed orthotist, prosthetist, or pedorthist does include the right to provide information or demonstration regarding the proper use and care of the device and to make adjustments to the device as needed.
- (4) A licensed orthotist, prosthetist, or pedorthist may utilize one or more non-licensed persons to assist in the provision of services, but the non-licensed person shall be limited to the performance of minor repairs on devices which have been previously dispensed to a patient.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.05 NECESSITY OF LICENSURE. On and after January 1, 2008, except as provided in Tennessee Code Annotated, Title 63, Chapter 3, Sections 205, 208 and 209, no person shall practice orthotics, prosthetics, or pedorthics in Tennessee, or hold himself or herself out as being able to practice such professions, or dispense an orthosis, prosthesis, or pedorthic device, unless such person is licensed in accordance with the requirements of this chapter.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.06 QUALIFICATIONS FOR LICENSURE.

- (1) Orthotist – To qualify for a license to practice orthotics, a person shall:
 - (a) Complete an orthotics education program which is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization; or

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- (b) Possess a baccalaureate degree (or have successfully completed the number of semester hours which is equivalent to four [4] years of study at a four-year college or university). The curriculum of the program of study completed by such person must include mathematics, physics, biology, chemistry, anatomy, biomechanics, pathology and psychology courses; and
 - (c) Successfully complete a clinical residency in orthotics. The majority of training must be devoted to services performed under the supervision of an orthotist licensed in Tennessee or a person in another state who has obtained certification from the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Orthotist/Prosthetist Certification; and
 - (d) Successfully complete all examinations required by Rule 1155-4-.08.
- (2) Prosthetist – To qualify for a license to practice prosthetics, a person shall:
- (a) Complete a prosthetic education program which is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization; or
 - (b) Possess a baccalaureate degree (or have successfully completed the number of semester hours which is equivalent to four (4) years of study at a four-year college or university). The curriculum of the program of study completed by such person must include math, physics, biology, chemistry, anatomy, biomechanics, pathology and psychology courses; and
 - (c) Successfully complete a clinical residency in prosthetics. The majority of training must be devoted to services performed under the supervision of a prosthetist licensed in Tennessee or a person in another state who has obtained certification from the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Orthotist/Prosthetist Certification; and
 - (d) Successfully complete all examinations required by Rule 1155-4-.08.
- (3) Pedorthist – To qualify for a license to practice pedorthics, a person shall:
- (a) Possess a high school diploma or comparable credential approved by the Board; and
 - (b) Successfully complete a pedorthics education program accredited by the Board for Certification in Pedorthics, or a pedorthics education program approved by the board, which includes:
 - 1. A basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics;
 - 2. A specific curriculum in pedorthics courses, including but not limited to lectures covering shoes, foot orthoses, and shoe modifications, pedorthics components and materials, training and functional capabilities, pedorthics performance evaluation, prescription considerations, etiology of disease processes necessitating use of pedorthics devices, medical management, and subject matter related to pediatric and geriatric problems; and
 - 3. Lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices; and

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- (c) Successfully complete a qualified work experience program or internship in pedorthics in accordance with standards and procedures established by the Board; and
- (d) Successfully complete all examinations required by Rule 1155-4-.08.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.07 PROCEDURES FOR LICENSURE.

- (1) An applicant shall download a current application from the Board's Internet Web page or shall obtain a current application packet from the Board's Administrative Office, respond truthfully and completely to every question or request for information contained in the application form, and submit it, along with all documentation and fees required, to the Board's Administrative Office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials be filed simultaneously.
- (2) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.
- (3) An applicant shall have successfully completed the requirements of Rule 1155-4-.06 and cause the supporting documentation to be sent from the document's issuer directly to the Board's Administrative Office. If the applicant has an active license in good standing as an orthotist, prosthetist, or pedorthist in another state which has licensure requirements substantially similar to those set forth in these rules, the Board may choose to waive the submission of the documentation required by this chapter.
- (4) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of a crime in any country, state, or municipality, except minor traffic violations;
 - (b) The denial of certification or licensure application by any other state or country, or the discipline of the certificate holder or licensee in any state or country;
 - (c) Loss, restriction, or voluntary surrender of certification or licensure privileges; and
 - (d) Any judgment or settlement in a civil suit in which the applicant was a party defendant, including malpractice, unethical conduct, breach of contract, or any other civil action remedy recognized by the country's or state's statutory, common law, or case law.
- (5) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (6) When necessary, all required documents shall be translated into English and such translation, together with the original document, shall be certified as to authenticity by the issuing source. Both versions must be submitted simultaneously.
- (7) If the applicant is licensed or was ever licensed as a health care professional in another state, the applicant shall cause the appropriate licensing Board in each state in which he holds or has held a license to send directly to the Board an official statement which indicates the condition of his license in such other state, including the date on which he was so licensed and under what provision such license was granted (i.e. certificate of clinical competence, examination, reciprocity, grandfathering, etc.).

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- (8) Application review, approval, denial, and interview decisions shall be made pursuant to Rule 1155-2-.07.
- (9) The requirement for licensure under these rules shall not apply to:
 - (a) A person who is employed by any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;
 - (b) A student enrolled in an educational program at a college or university which will enable that student to obtain a license to practice orthotics, prosthetics, or pedorthics upon graduation from the program;
 - (c) A resident continuing such resident's clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education; and
 - (d) A student in a qualified work experience program or internship in pedorthics.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.08 EXAMINATIONS.

- (1) In addition to the jurisprudence examination required by paragraph (4), an applicant for licensure as an orthotist, prosthetist, or pedorthist must successfully complete and make a passing score on the examination(s) approved and offered by the American Board for Certification in Orthotics and Prosthetics, Inc., the Board for Certification in Pedorthics, or other examination(s) approved by the board.
- (2) Passing scores shall be determined by the testing agencies and/or exam providers.
- (3) Examination fees shall be sent from the applicant directly to the testing agencies and/or exam providers.
- (4) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
 - (a) The Board shall include a jurisprudence examination with all applications for licensure that are mailed from the Board's administrative office, or the applicant may obtain the jurisprudence examination from the Board's Internet web page that can be accessed at www.Tennessee.gov/health.
 - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is returned to the Board's administrative office.
 - (c) There is no fee for the jurisprudence examination.
 - (d) The scope and content of the examination shall be determined by the Board but limited to:
 - 1. statutes and regulations governing the practice of orthotics, prosthetics, or pedorthics (T.C.A. §§ 63-3-201 et seq., and Chapter 1155-4 of the Official Compilation, Rules and Regulations of the State of Tennessee); and

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2. the following ethics documents, as applicable for the type licensure being sought:
 - (i) The Canons of Ethics of the American Board for Certification in Orthotics and Prosthetics Inc.
 - (ii) The Code of Ethics of the Board for Orthotist/Prosthetist Certification.
 - (iii) The Code of Ethical Conduct of the Board for Certification in Pedorthics, Inc.
- (e) Information regarding how to acquire copies of the applicable statutes, regulations and ethics documents is available upon request from the Board's administrative office.
- (f) The format of the examination shall be "open-book."
- (g) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
- (h) Applicants who fail to successfully complete the jurisprudence examination must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.09 FEES. All fees except the State Regulatory fee are non-refundable.

(1)	Application	\$300.00
(2)	Renewal (biennial)	\$300.00
(3)	Late Renewal	\$100.00
(4)	Reinstatement	\$300.00
(5)	Duplicate or Replacement License	\$ 25.00
(6)	Continuing Education Course Accreditation	\$ 50.00
(7)	State Regulatory (biennial)	\$ 10.00

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.10 RENEWAL OF LICENSURE.

- (1) The due date for renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Board's biennial birthdate renewal system, which is the expiration date shown on the licensee's renewal certificate.
- (2) Methods of Renewal

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- (a) Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennessee.gov

- (b) Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (3) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
 - (a) A completed renewal application form; and
 - (b) The renewal and state regulatory fees as provided in Rule 1155-4-.09.
 - (4) To be eligible for renewal an individual must have completed the continuing education requirements provided in Rule 1155-4-.12 and must attest to such completion on the renewal application. An individual who fails to obtain continuing education hours, pursuant to Rule 1155-4-.12, may be subject to disciplinary action by the Board.
 - (5) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their license processed pursuant to Rule 1200-10-1-.10.
 - (6) Reinstatement of a license that has expired as a result of failure to timely renew in accordance with Rule 1200-10-1-.10 may be accomplished upon meeting the following conditions:
 - (a) Payment of all past due renewal and state regulatory fees;
 - (b) Payment of the late renewal fee provided in Rule 1155-4-.09; and
 - (c) Compliance with continuing education requirements pursuant to Rule 1155-4-.12.
 - (7) Renewal applications shall be treated as licensure applications, and shall be governed by Rule 1155-2-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.11 RETIREMENT AND REACTIVATION.

- (1) A person who holds a current license and does not intend to practice as an orthotist, prosthetist or pedorthist may apply to convert an active license to retired ("inactive") status. An individual who holds a retired license will not be required to pay the renewal fee.
- (2) A person who holds an active license may apply for retired status in the following manner:
 - (a) Obtain, complete, and submit to the Board's administrative office an affidavit of retirement form; and
 - (b) Submit any other documentation which may be required to the Board's administrative office.

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- (3) A licensee whose certificate has been retired may re-enter active status by doing the following:
 - (a) Obtain complete and submit to the Board's administrative office a reactivation application; and
 - (b) Pay the renewal fees and state regulatory fees as provided in Rule 1155-4-.09. If reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Board will require payment of the late renewal fee and past due renewal fees; and
 - (c) Submit verification of successful completion of continuing education hours for the period of retirement, pursuant to Rule 1155-4-.12.
- (4) Reactivation applications shall be treated as licensure applications, and shall be governed by Rule 1155-2-.07.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.12 CONTINUING EDUCATION.

- (1) Each licensed orthotist, prosthetist and pedorthist must annually complete fifteen (15) hours of continuing education in courses applicable to his/ her profession. No more than five (5) hours of the annual requirement shall be completed by any of the means listed in Rule 1155-2-.12 (1) (c). A person who is licensed in more than one (1) profession under these rules shall annually complete twenty (20) hours of continuing education in courses applicable to the professions in which he/she is licensed. At least six (6) hours of the continuing education each year must be obtained by each licensee from providers in the state of Tennessee.
- (2) Acceptable continuing education shall consist of courses provided, approved, or sponsored by:
 - (a) The American Board for Certification in Orthotics and Prosthetics, Inc.;
 - (b) The Board for Orthotist/Prosthetist Certification;
 - (c) The Board for Certification in Pedorthics;
 - (d) The Pedorthic Footwear Association;
 - (e) Tennessee Orthotic and Prosthetic Facilities, Inc.;
 - (f) The Tennessee Podiatric Medical Association; and
 - (g) any other entity whose education programs have been approved by the Board.
- (3) Course Approval
 - (a) Courses to be offered for credit toward the required continuing education hours must, unless provided, approved or sponsored by an entity listed in paragraph (2), receive prior approval from the Board.
 - (b) Prior approval of a course may be obtained by submitting the following information to the Board's administrative office at least forty-five (45) days prior to the scheduled date of the course:

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1. A course description or outline;
 2. Names of all lecturers;
 3. Brief resume of all lecturers;
 4. Number of hours of educational credit requested;
 5. Date and location of course or how to access the course electronically;
 6. How certification of attendance is to be documented; and
 7. The Continuing Education Course Accreditation Fee required to be paid pursuant to Rule 1155-4-.09.
- (4) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. The Board will not maintain continuing education files.
- (5) Each licensee must, within thirty (30) days of a request from the Board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or original letters from course providers are such evidence.
- (6) Licensees are exempt from the continuing education requirements for the calendar year that the requirements of Rule 1155-4-.06 were completed.
- (7) Violations
- (a) Any person who falsely attests to attendance and completion of the required hours of continuing education may be subject to disciplinary action.
 - (b) Any person who fails to obtain the required continuing education hours may be subject to disciplinary action.
- (8) Education hours obtained as a result of compliance with the terms of a Board order in any disciplinary action shall not be counted toward the continuing education hours required to be obtained by paragraph (1) of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.

1155-4-.13 DISCIPLINARY ACTIONS, SUBPOENAS, DECLARATORY ORDERS, SCREENING PANELS AND ADVISORY PRIVATE LETTER RULINGS.

- (1) Disciplinary Actions – Licensed orthotists, prosthetist and pedorthists issued by the Board are subject to being disciplined for the same causes, to the same extent and pursuant to the same procedures provided in Rule 1155-2-.15 as licensed podiatrists.
- (2) Subpoenas – Subpoena procedures shall be governed by Rule 1155-2-.15.
- (3) Declaratory Orders – Declaratory order procedures shall be governed by Rule 1155-2-.19.

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- (4) Screening Panels – Screening panel procedures shall be governed by Rule 1155-2-.19.
- (5) Advisory Private Letter Rulings – Advisory private letter rulings shall be governed by Rule 1155-2-.19.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.14 ADVERTISING. ADVERTISING SHALL BE GOVERNED BY RULE 1155-2-.22.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.15 CHANGE OF ADDRESS AND/OR NAME.

- (1) Change of Name - Licensees shall notify the Board in writing within thirty (30) days of a name change and shall provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession and license number.
- (2) Change of Address – A licensee who has had a change of address or place of employment shall file in writing with the Board his/her current address, giving both old and new addresses. Such requests shall be received in the Board's administrative office no later than thirty (30) days after such change is effective and must reference the licensee's name, profession, and license number.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.16 "GRANDFATHER" PROVISIONS FOR LICENSURE.

- (1) Until January 1, 2008, a person certified by the American Board for Certification in Orthotics and Prosthetics, Inc., with the title of Certified Orthotist (CO), Certified Prosthetist (CP), or Certified Orthotist-Prosthetist (CPO) or The Board for Orthotist/Prosthetist Certification with the title of Board of Orthotic Certification - Orthotist (BOCO) or Board of Certification - Prosthetist (BOCP) or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and may be granted orthotic or prosthetic licensure upon payment of the required fee. After that date, any applicant for initial licensure as an orthotist or a prosthetist shall meet the requirements of these rules regarding licensure.
- (2) Until January 1, 2008, a person certified as a Certified Pedorthist (CPED) by the Board of Certification in Pedorthics, Inc., or a person certified as a CO, CP or CPO by the American Board for Certification in Orthotics and Prosthetics, Inc. or certified as a BOCO or BOCP by the Board for Orthotist/Prosthetist Certification or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and may be granted pedorthic licensure upon payment of the required fee. After that date, any applicant for initial licensure as a pedorthist shall meet the requirements of these rules regarding licensure.
- (3) Until January 1, 2007, a person who has practiced full-time for a minimum of the past five (5) years in a prosthetic/orthotics facility as an orthotist or prosthetist or in a pedorthics facility as a pedorthist may file an application with the Board and may be issued a license to practice orthotics, prosthetics, or pedorthics without examination, upon payment of the required fee and

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after the Board has completed an investigation of the applicant's work history. The investigation may include, but is not limited to, completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice. A "facility" is the business location where orthotics, prosthetic, or pedorthic care is provided and which has the appropriate clinical and laboratory space and equipment to provide such care.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.17 SALE OF OVER-THE-COUNTER AND OFF-THE-SHELF DEVICES.

- (1) "Over-the-counter device" means a prefabricated, mass-produced device that is prepackaged and requires no professional advice or judgment in either size selection or use, including fabric or elastic supports, corsets, generic arch supports and elastic hoses.
- (2) "Off-the-shelf device" means a prefabricated prosthesis or orthosis sized or modified for use by the patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which does not require substantial clinical judgment and substantive alteration for appropriate use.
- (3) The sale of over-the-counter and off-the-shelf devices by non-licensed persons is not prohibited by these rules.
- (4) No person shall dispense or sell an over-the-counter device or an off-the-shelf device based upon an image of the customer's limb captured by the person through a mold, cast, tracing, scanning device, digital appliance, or pressure sensitive device, unless the customer has first presented to that person a written prescription for that device from a health care practitioner authorized by law to write such a prescription.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.18 CUSTOM FABRICATED AND FITTED DEVICES.

- (1) "Custom fabricated and fitted device" means an orthosis, prosthesis, or pedorthic device which is fabricated to original measurements or a mold for use by a patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which requires substantial clinical and technical judgment in its design and fitting.
- (2) "Custom fitted device" means a prefabricated orthosis, prosthesis, or pedorthic device sized or modified for use by the patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which requires substantial clinical judgment and substantive alteration for appropriate use.
- (3) Custom fabricated devices and custom fabricated and fitted devices must be dispensed by a licensed health care practitioner or by a person licensed under these rules in accordance with a prescription from a licensed health care practitioner.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

RULEMAKING HEARINGS

1155-4-.19 OTHER LICENSED HEALTH CARE PRACTITIONERS. Nothing in these rules shall be interpreted as limiting or restricting a health care practitioner licensed under any chapter of Title 63, Tennessee Code Annotated, from engaging in the full scope of practice allowed by such person's license.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

1155-4-.20 PHARMACISTS, HOME MEDICAL EQUIPMENT PROVIDERS, AND ORTHOSIS MANUFACTURERS.

- (1) Nothing in these rules shall be interpreted as limiting or restricting individuals acting under the supervision and control of a pharmacist or pharmacy licensed under Title 63, or home medical equipment provider licensed under Title 68, from measuring, fitting or adjusting any non-custom fabricated and fitted device, including but not limited to over-the-counter devices or off-the-shelf devices, so long as such individual does not create a cast, mold or scan of a part of the human body for the purpose of constructing a medical device to treat a patient's medical condition and so long as such individual meets one of the following criteria for such device:
 - (a) Documented training from a manufacturer; or training from a licensed or certified orthotist, prosthetist, or pedorthist; or
 - (b) Certification or registration as a fitter of orthotics, prosthetics, or pedorthics, from a nationally recognized board or association such as the Board for Orthotist/Prosthetist Certification (BOC), the Board of Certification for Pedorthists, the National Community Pharmacists Association (NCPA), or the American Board for Certification in Orthotics and Prosthetics (ABC); or
 - (c) Direct supervision by a trained and experienced, or certified, or registered, fitter of orthotic, prosthetic, or pedorthic devices.
- (2) Nothing in these rules shall be interpreted as limiting or restricting individuals acting under the supervision and control of a pharmacist or pharmacy licensed under Title 63, or home medical equipment provider licensed under Title 68, from measuring, fitting or adjusting any non-custom fabricated and fitted pedorthic devices, including but not limited to diabetic shoes, provided such individual meets the criteria of either subparagraph (1) (b) or (1) (c) and so long as the individual does not create a cast, mold or scan of a part of the human body for the purpose of constructing a medical device to treat a patient's medical problem.
- (3) Nothing in these rules shall be interpreted as limiting or restricting the measuring, fitting or adjusting of an orthotic device by an employee or authorized representative of an orthosis manufacturer registered with the federal Food and Drug Administration, provided:
 - (a) such employee or representative is supervised by a licensed health care professional authorized by law to prescribe, measure or fit such device;
 - (b) the measuring, fitting or adjusting of such device occurs in the office of such licensed health care professional or in a health care facility; and
 - (c) the licensed health care professional examines the patient to ensure that the device has been properly measured, fitted or adjusted by the employee or authorized representative.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

RULEMAKING HEARINGS

1155-4-.21 THERAPEUTIC FOOTWEAR. The following actions with respect to therapeutic footwear and medical devices for the foot and ankle must be performed by a health care practitioner licensed under Title 63 who is acting within his or her lawful scope of practice:

- (1) Modifications or additions to the interior or exterior of footwear for therapeutic purposes, including but not limited to heel lifts, outflare heels, Thomas heels, full sole lifts, wedged soles, rocker bottom soles, metatarsal bars, metatarsal raises or inserts that have fillers as part of their construction, toe fillers, and partial foot fillers;
- (2) Permanent or temporary attachment of an orthosis to the footwear;
- (3) Addition or modification of a removable or attached therapeutic foot device inside the shoe which was fabricated based on a cast, impression, mold, scan, imprint or tracing;
- (4) Creation of an image of a person's foot or ankle through the use of a mold, cast, scanning device, digital appliance, tracing, pressure sensitive device or other similar device; and
- (5) Analysis, evaluation, measurement, assessment, or screening of a foot for the purpose of making a therapeutic recommendation.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and Public Chapter 380 of the Public Acts of 2005.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 6th day of October, 2005. (10-07)

RULEMAKING HEARINGS

BOARD OF EXAMINERS IN PSYCHOLOGY - 1180

There will be a hearing before the Tennessee Board of Examiners in Psychology to consider the promulgation of amendment to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 5th Ave. North, Nashville, TN at 3:30 p.m. (CST) on the 19th day of December, 2005.

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1180-1-.02, Necessity of Licensure and Certification, is amended by adding the following language as new paragraph (5):

(5) Use of Titles

- (a) Any person who possesses a valid, unsuspended and unrevoked psychologist license issued by the Board has the right to use the title "Psychologist" and to practice psychology, as defined in T.C.A. § 63-11-203.
- (b) Any person who possesses a valid, unsuspended and unrevoked psychological examiner or senior psychological license issued by the Board has the right to use the titles "Psychological Examiner" or "Senior Psychological Examiner," as applicable, and to practice psychology, as defined in T.C.A. § 63-11-202.
- (c) Any person who possesses a valid, unsuspended and unrevoked psychological assistant certification issued by the Board has the right to use the title "Certified Psychological Assistant" and to practice psychology under supervision as defined in Rule 1180-4-.01.
- (d) Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee or certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-201, 63-11-202, 63-11-203, 63-11-207, 63-11-208, and Public Chapter 467 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 1880-2-.02, Qualifications for Licensure, is amended by deleting subpart (2) (d) 3. (iii) in its entirety and renumbering the present subpart (2) (d) 3. (iv) as (2) (d) 3. (iii).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-202, and 63-11-208.*

Rule 1180-2-.03, Procedures for Licensure, is amended by deleting subparagraphs (11) (e) and (11) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (11) (f) shall read:

- (11) (e) Instead of submitting the documentation required in subparagraphs (11) (b) and (11) (c), applicants who have been continuously licensed in good standing for five (5) or more years in another jurisdiction may submit proof of current certification by the ABPP, or current listing in the National Register of Health Service Providers, or cause to have submitted a Certificate of Professional Qualification (CPQ) sent directly from the ASPPB to the Board's administrative office.
- (11) (f) Notwithstanding the provisions of subparagraph (11) (e) or T.C.A. § 63-11-208 (d) (2) (A), under no circumstances shall an applicant for licensure by reciprocity with HSP designation be approved without successful completion of the qualifying internship required in rule 1180-2-.02 (2) (a) and the postdoctoral supervised experience required in rule 1180-2-.02 (2) (d).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-202, 63-11-208, and 63-11-211.*

Rule 1180-4-.03, Procedures for Certification, is amended by deleting paragraph (12) in its entirety.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-201, and 63-11-207.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of October, 2005. (10-23)

RULEMAKING HEARINGS

TENNESSEE PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION - 1175

There will be a hearing before the Tennessee Private Investigation and Polygraph Commission to consider the promulgation of amendments to rules and pursuant to T.C.A. '62-27-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. '4-5-204, and will take place in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m.(CST) on the 16th day of December, 2005.

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

For a copy of this notice of rulemaking hearing, contact: Donna Hancock, Executive Director, Tennessee Private Investigation and Polygraph Commission, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243, telephone (615) 532-9160.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1175-1 PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION

AMENDMENTS

Rule 1175-1-.03 Fingerprinting is amended by adding a new paragraph (3) immediately following paragraph (2) which shall read as follows:

- (3) In the event that the fingerprint card submitted by an applicant is rejected or otherwise unable to be processed by the Tennessee Bureau of Investigation (TBI) and/or the Federal Bureau of Investigation (FBI), the applicant shall submit a new fingerprint card together with any fee(s) charged by the TBI and/or FBI for processing fingerprints.

Authority: T.C.A. §§ 62-26-208 and 62-26-303.

Rule 1175-1-.11 License Fees is amended by adding a new paragraph (3) immediately following paragraph (2) which shall read as follows:

- (3) The fees for retirement and activation of a private investigators license are as follows:

Retirement of a private investigator's license.....\$100.00

Reactivation of retired private investigator's license.....\$100.00

Authority: T.C.A. §§ 62-26-208, 62-26-204(e) and 62-26-303.

RULEMAKING HEARINGS

CHAPTER 1175-2 CONTINUING PROFESSIONAL EDUCATION

AMENDMENTS

Rule 1175-2-.02 Purpose is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1175-2-.02 PURPOSE.

The Private Investigators Licensing and Regulatory Act, as amended, requires each licensed private investigator to receive twelve (12) hours of continuing professional education during each two (2) year period prior to renewal as a prerequisite for keeping the license valid. The purposes of this chapter are to prescribe the basic continuing education requirements for present and future licensees; to establish standards by which continuing education will be evaluated for the awarding of credit; and to ensure compliance with the Act.

Authority: *T.C.A. § 62-26-225(a) and (c) and § 62-26-303.*

Paragraph (8) of Rule 1175-2-.03 Qualifying Programs is amended by deleting the text of the paragraph in its entirety and substituting in its place the following language so that, as amended, paragraph (8) of Rule 1175-2-.03 shall read as follows:

- (8) No carryover of hours from renewal period to the next renewal period is permitted.

Authority: *T.C.A. § 62-26-225(c) and § 62-26-303.*

Rule 1175-2-.09 Reactivation of Retired Licenses is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1175-2-.09 REACTIVATION OF RETIRED LICENSES.

A private investigator who wishes to reactivate a retired license pursuant to T.C.A. § 62-26-204(e)(2) must first complete the continuing professional education requirements set forth in T.C.A. § 62-26-225 for the renewal period in which the retiree wishes to reactivate.

Authority: *T.C.A. §§ 62-26-204 and 62-26-303.*

The notice of rulemaking set out herein was properly filed in the Department of State on 31st day of October, 2005. (10-44)

WILDLIFE RESOURCES COMMISSION

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 05-22 STATEWIDE PROCLAMATION ON THE COMMERCIAL TAKING OF FISH AND TURTLES

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-1-206, 70-2-205, 70-4-107, and 70-4-119 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following regulations pertaining to the commercial taking of fish and turtles, hereinafter called commercial fishing.

Commercial fishing is hereby authorized in accordance with the following provisions, except where expressly forbidden by law. All commercial fishing gear must meet the specifications and be fished in the manner provided for in Sections I, II, III, IV, and V of this proclamation.

SECTION I. WATERS OPEN TO COMMERCIAL FISHING

For purposes of this proclamation, "river" means that body of water confined within the identifiable banks. At high river stage, oxbows, sloughs, and backwaters accessible by boat from the river are open to commercial fishing, but are considered private water and may be fished only with permission of the landowner.

RIVERS

The following are open year-round to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps unless otherwise specified.

1. CLINCH RIVER - fishing authorized only downstream from Melton Hill Dam. Gill and trammel nets prohibited.
2. EMORY RIVER - fishing authorized only downstream from the Harriman Bridge. Gill and trammel nets prohibited.
3. FORKED DEER RIVER - except that portion of the Middle Fork lying within the boundaries of the Chickasaw National Wildlife Refuge.
4. FRENCH BROAD RIVER
5. HARPETH RIVER - fishing authorized only downstream from State Hwy. 49 Bridge, except that trotlines may be fished upstream of the bridge.
6. HATCHIE RIVER
7. HIWASSEE RIVER - fishing authorized only downstream from U.S. 11 Bridge (Charleston).
8. HOLSTON RIVER

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9. LOOSAHATCHIE RIVER - fishing authorized only downstream from the New Raleigh-Millington Road Bridge.
10. MISSISSIPPI RIVER - (except that portion from the Mississippi-Tennessee line upstream to Mississippi River Mile 745, marked by the upper, or northern, tip of Hickman Bar, which is closed. This closure includes McKellar Lake and Wolf River embayment). Wardlow's Pocket and Wardlow's Pocket Chute (except those portions lying within the boundaries of the Chickasaw National Wildlife Refuge), Heathright Pocket, Cold Creek, Cold Creek Chute, lying within the boundaries of Anderson Tully WMA in Lauderdale County are open; all other ponds, lakes, arms, sloughs, bayous, and pockets within the WMA are closed. All sturgeon greater than 30 inches must be returned immediately to the water.
11. NOLICHUCKY RIVER
12. OBION RIVER
13. RED RIVER - fishing authorized only downstream from U.S. 41A Bridge , except that trotlines may be fished upstream of the bridge.
14. STONES RIVER - fishing closed from confluence with Cumberland River upstream, except that trotlines may be fished upstream of the Cumberland River confluence.
15. WOLF RIVER - Only the section from Germantown Bridge upstream is open to commercial fishing. Gill nets and trammel nets are prohibited. The section upstream of Bateman Bridge in Fayette County is open for trotlines only.
16. CUMBERLAND RIVER - As listed in Section I. RESERVOIRS except from Cordell Hull Dam upstream is closed.
17. TENNESSEE RIVER - As listed in Section I. RESERVOIRS.
18. DUCK RIVER - That portion of the Duck River from its confluence with Blue Creek at approximate DRM 13.2 downstream to the Hustburg pipeline crossing is open year-round to trotlines, hoop nets, and slat baskets. The Duck River from DRM 4.0 downstream to the Hustburg pipeline crossing at approximate DRM 1.4 is open to gill nets and trammel nets from December 1 through January 15. The rest of Duck River downstream is open year-round to all legal commercial gear types. Duck River upstream from its confluence with Blue Creek is closed to all commercial fishing.

RESERVOIRS

Group A: The following reservoirs are open year-round unless otherwise specified to trotlines, hoop nets, fyke nets, pound nets, trap nets, gill nets, trammel nets, slat baskets, cast nets and turtle traps. The reservoir boundary for commercial fishing regulations is the full pool elevation unless otherwise specified.

1. BARKLEY
2. CHEATHAM - Commercial fishermen must contract with TWRA and abide by the contract provisions as determined by TWRA in order to commercial fish.

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3. CHICKAMAUGA
4. DOUGLAS - Entanglement gear (gill and trammel nets) and hoop nets are prohibited above Point 14 from January through June. Entanglement gear (gill and trammel nets) is prohibited from the mouth to the headwaters of Indian, McGuire, Muddy and Flat Creeks from October through February.
5. GUNTERSVILLE
6. NICKAJACK
7. PICKWICK
8. JOHN SEVIER
9. DAVY CROCKETT (Greene County)

Group B: The following reservoirs are open year-round except for specific restrictions as listed:

1. CHEROKEE - trammel nets and gill nets are prohibited. The taking and possession of blue catfish and paddlefish by commercial fishing methods are prohibited.
2. KENTUCKY - commercial fishing gear and sport fishing trotlines are prohibited in the New Johnsonville Steamplant Harbor and within 50 yards of the Danville Railroad Bridge dikes (approximate TRM 78.3).

The Duck River embayment from DRM 4.0 upstream to its confluence with Blue Creek at approximate DRM 13.2 is closed year-round to all commercial fishing gear types except trotlines, hoop nets, and slat baskets. The Duck River embayment from the Hustburg pipeline crossing at approximate DRM 1.4 upstream to DRM 4.0 is closed to commercial fishing with gill nets and trammel nets except from December 1 through January 15 each year.

Paddlefish harvest and all entanglement type commercial fishing gear with mesh sizes greater than 4 inches is prohibited year-round in the Big Sandy River Embayment (all waters west of a line drawn from Pace Point to the mouth of Eagle Creek). Additionally, unattended entanglement type commercial fishing gear is prohibited from November 25 through March 15 in waters of the U.S. Fish and Wildlife Service Refuge located within the Big Sandy River Embayment and in all of the waters of the West Sandy Creek Arm of the Big Sandy River Embayment.

All commercial fishing gear except slat baskets and trotlines is prohibited in all creeks from 4 a.m. to 9 p.m. during the months of April and May; all commercial fishing gear is permitted in all creeks from 9 p.m. to 4 a.m. daily during the months of April and May, except that whip sets (the driving of fish into trammel and gill nets by the use of noise and disturbing the water) are not permitted in any creeks which have operating commercial docks.

3. REELFOOT
 - (a) The taking of grass carp (*C. idella*) is prohibited.
4. WATTS BAR - trammel and gill nets are prohibited.
5. OLD HICKORY

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- (a) Trammel and gill nets are prohibited from Highway 231 upstream to Cordell Hull Dam and including the Caney Fork River.
 - (b) Trammel and gill nets are prohibited from Highway 109 upstream to 231 except fishing of legal entanglement nets by whipset or trammeling method are permitted by contract with the Tennessee Wildlife Resources Agency.
6. FORT LOUDOUN - the possession of all species of catfish taken by commercial methods from Fort Loudoun Dam upstream to the confluence of the French Broad and Holston rivers is prohibited.

SECTION II. LICENSE

A commercial fishing license is required by anyone engaging in or assisting anyone engaging in commercial fishing. A commercial fisher with a valid Commercial Fishing License must be on board the vessel while commercial fishing for fish or turtles. A commercial fisher with a valid Commercial Fishing License and a valid Commercial Roe Fish Permit, Supplemental must be on board the vessel while any part of a sturgeon, paddlefish, or bowfin is harvested from the waters of the state. Any Commercial Fisher possessing a Commercial Roe Fish Permit on February 28, 2006, shall have priority to renew the permit in March, 2006, and in each succeeding March thereafter until he/she fails to renew such permit. Any other person who purchases a Commercial Roe Fish Permit between March 1, 2006, and March 31, 2006, shall have priority to renew the permit in March, 2007, and in each succeeding March thereafter until he/she fails to renew such permit. In no event shall the number of Commercial Roe Fish Permits issued for the 2006-2007 license year exceed 110. For the 2007-2008 license year and each license year thereafter, the number of Commercial Roe Fish Permits available for purchase each year shall be limited to the number issued between March 1, 2006 and May 31, 2006 plus 15%. A commercial fisher with a valid Commercial Fishing License and a valid Commercial Turtle Permit, Supplemental must be present to commercially harvest turtles from the waters of the State. A wholesale fish dealer must have a valid Wholesale Fish Dealer's License and a valid Wholesale Roe Fish Permit, Supplemental to buy, hold, or sell any part of a sturgeon, paddlefish, or bowfin.

SECTION III. GENERAL PROVISIONS

- A. Fish and turtles classified as endangered, threatened, or in need of management as proclaimed by the Wildlife Resources Commission may not be taken.
- B. The following fish species may be taken and sold commercially year-round unless otherwise restricted by this proclamation, other Tennessee Wildlife Resources Commission proclamations or rules, or Tennessee Code Annotated.

Common Name	Scientific Name
Shovelnose sturgeon	Scaphirhynchus platyrhynchus (Rafinesque)
Paddlefish	Polyodon spathula (Walbaum)
Spotted gar	Lepisosteus oculatus (Winchell)
Longnose gar	Lepisosteus osseus (Linnaeus)
Shortnose gar	Lepisosteus platostomus Rafinesque
Bowfin	Amia calva Linnaeus
Skipjack herring	Alosa chrysochloris (Rafinesque)
Gizzard shad	Dorosoma cepedianum (Lesueur)
Threadfin shad	Dorosoma petenense (Guenther)

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Grass carp	Ctenopharyngodon idella (Valenciennes)
Common carp	Cyprinus carpio Linnaeus
Silver carp	Hypophthalmichthys molitrix (Valenciennes)
Bighead carp	Hypophthalmichthys nobilis (Richardson)
River carpsucker	Carpionodes carpio (Rafinesque)
Quillback	Carpionodes cyprinus (Lesueur)
White sucker	Catostomus commersoni (Lacepede)
Smallmouth buffalo	Ictiobus bubalus (Rafinesque)
Bigmouth buffalo	Ictiobus cyprinellus (Valenciennes)
Black buffalo	Ictiobus niger (Rafinesque)
Spotted sucker	Minytrema melanops (Rafinesque)
Silver redhorse	Moxostoma anisurum (Rafinesque)
Golden redhorse	Moxostoma erythrurum (Rafinesque)
Black bullhead	Ameiurus melas (Rafinesque)
Yellow bullhead	Ameiurus natalis (Lesueur)
Brown bullhead	Ameiurus nebulosus (Lesueur)
Blue catfish	Ictalurus furcatus (Lesueur)
Channel catfish	Ictalurus punctatus (Rafinesque)
Flathead catfish	Pylodictis olivaris (Rafinesque)
Freshwater drum	Aplodinotus grunniens Rafinesque
Yellow bass	Morone mississippiensis Jordan, Eigenmann

The taking and possession of blue catfish and paddlefish from Cherokee Reservoir by commercial fishing methods is prohibited.

Paddlefish or parts thereof shall not be taken during the period from April 16 through November 14, nor shall they be possessed during this period unless they were previously taken during a legal taking season. Shovelnose sturgeon or parts thereof shall not be taken during the period from May 16 through October 14, nor shall they be possessed during this period unless they were previously taken during a legal taking season. Those persons possessing paddlefish or sturgeon or parts thereof during these closed periods must have in their possession receipts denoting pounds of flesh or eggs (or both if applicable) in their possession, name and address of supplier/fishermen, the name of the water body from which fish were harvested, and date of harvest or date obtained. From November 15, 2005 through November 14, 2007 paddlefish must be 36" or larger eye to fork length, from November 15, 2007 through November 14, 2008 paddlefish must be 37" or larger eye to fork length, and after November 15, 2008 paddlefish must be 38" or larger eye to fork length to be legal for harvest from all waters except the Mississippi River. Paddlefish must be 34 inches or larger eye to fork length to be legal for harvest from the Mississippi River. Shovelnose sturgeon must be larger than 24 inches and smaller than 32 inches from the tip of the snout to the fork of the tail to be legal for harvest. Paddlefish less than the appropriate minimum eye to fork length limit and shovelnose sturgeon smaller than 24 inches or greater than 32 inches must be returned immediately to the water. Paddlefish may not be possessed alive away from the harvested waters. Any paddlefish and/or shovelnose sturgeon from which eggs are taken must be kept. The cutting or mutilation of paddlefish to check for eggs is prohibited. A 2-inch portion of ovary must remain in each harvested paddlefish while on the water or immediately adjacent to the water where harvested. Paddlefish eggs removed from ovaries must be kept in separate containers - eggs from one fish only per container. Shovelnose sturgeon must remain whole and the eggs must remain in each harvested shovelnose sturgeon while on the water or immediately adjacent to the water where harvested. Paddlefish may not be kept alive except for permitted aquaculture purposes.

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- C. Only the Common Snapping Turtle, *Chelydra serpentina serpentina*, with a carapace (upper shell) length of at least 12 inches, measured front to back, may be taken year-round and statewide without limit by any legal commercial fishing method.
- D. Only at Reelfoot Wildlife Management Area, all sizes and species of turtles except the box turtles and those covered in Item A. above may be taken by any legal commercial fishing method.
- E. Commercial fishing gear is prohibited within 1,000 yards downstream of any TVA or Corps of Engineers Dam, within 300 yards of any commercial boat dock or resort, or within 100 yards of the mouth of any stream, river, or inlet at any time. For purposes of this proclamation, wingwalls and lock walls are considered to be a part of the "dam", and measurements will be made from their downstream end.
- F. No catfish less than 8 inches in length may be kept alive. The commercial harvest of catfish greater than 34 inches in length is prohibited statewide.
- G. Gill nets, trammel nets, turtle traps, and trotlines must be run at least once every 24 hour period. Other types of commercial fishing gear must be run at least once every 72 hour period.
- H. Hoop nets, fyke nets, trap nets, and pound nets with a mesh size of one (1) inch or smaller on the square may be fished only during the months of October, November, December, January, February, March, and April, except the Mississippi River, which is open year-round.
- I. A fish seine may be used in private waters and in waters which are replenished by overflows from the Mississippi, Tennessee, Obion, Hatchie, Wolf, Loosahatchie, and Forked Deer rivers, but which during the dry season of the year have no outlet to these rivers. Fish seines as defined in this proclamation may be used in the dewatering areas of Kentucky Reservoir.
- J. No commercial fishing gear shall be set so as to extend more than three-quarters (3/4) across any stream, river, chute, or embayment.
- K. Paddlefish larger than the appropriate minimum eye to fork length limit can be blocked (with the tail remaining on the fish) prior to sale if the fish also meets the appropriate minimum block length (as measured along side of the fish from the fork of the tail to the edge of the skin behind the gill arch) limit. The minimum block length limit for each minimum eye to fork length limit is reported in the table below. Blocked fish must be larger than both the minimum eye-to-fork length limit and the minimum block length limit. Prior to sale to an in-state wholesale fish dealer's business or prior to being marketed out-of-state, paddlefish carcasses may not be altered in such a manner that the eye to fork length or the block length of the fish can not be determined.

If the minimum eye to fork length is:	Then the minimum block length is:
34 inches	25 inches
36 inches	27 inches
37 inches	27 inches
38 inches	28 inches
40 inches	30 inches

- L. Prior to sale to an in-state wholesale fish dealer's business or prior to being marketed out-of-state, shovelnose sturgeon carcasses may not be altered in such a manner that the length of the fish may not be determined.

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- M. Commercially harvested paddlefish and sturgeon or parts thereof taken from the waters of the state and sold in-state must be marketed to a licensed wholesale fish dealer who has a valid Wholesale Roe Fish Permit, Supplemental.

SECTION IV. COMMERCIAL FISHING GEAR

Legal gear types are trotlines, slat baskets, hoop nets, fyke nets, pound nets, trap nets, trammel nets, seines, turtle traps, and cast nets.

1. Slat Basket

A slat basket is defined as a device used for taking of commercial fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats or splits which are placed lengthwise and so constructed that there must be a minimum of four openings in the catching area, each being at least 1½" wide and 6" long.

2. Hoop Net

A barrel shaped net made of synthetic cotton, linen, or nylon, and supported by hoops. A hoop net is also known as a barrel net, set net, funnel net, and trap net. One or more throats are attached inside the hoop structure. Legal mesh size of hoop nets is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for special restriction on 1" or smaller sizes.

3. Fyke Net, Trap Net and Pound Net

A fyke net, also known as a wing net, is a hoop net to which as many as three (3) wings or leads may be attached. Trap nets or pound nets which have rectangular or box shaped traps shall also be legal by this definition. The wings or leads are equipped with floats and sinkers, and the webbing of the wings shall be constructed of twine not smaller than Number 7 in nylon or Number 9 in cotton or linen. The maximum length of each wing is 50 feet. The legal mesh size of fyke nets and wings or leads is one (1) inch or smaller or three (3) inches or larger on the square. See Section III. for restriction on 1" or smaller sizes.

4. Trammel Net

A trammel net is defined as a net having three (3) webs (nets) hung to a single top (float) and bottom (lead) line. The two outside webs are called walling, and the inside web is called webbing. The inside webbing shall have a mesh size of not less than three (3) inches on the square. Effective April 24, 2003, webbing with square mesh greater than 4.0 and less than 6.0 inches is prohibited except on the Mississippi River where webbing with square mesh greater than 4.0 and less than 5.0 inches is prohibited. The outside walling shall have a mesh size of not less than six (6) inches on the square. The maximum mesh size of the outside walling shall consist of vertical ties or hobbles on each side of the webbing at six (6) foot intervals along the float and lead line. A net may not be hobbled to less than two thirds the height of the net. Maximum length of a trammel net is three hundred (300) yards. Trammel nets must be fished in a stationary manner except in the Mississippi River.

5. Gill Net

A gill net is defined as a single net attached to float and lead lines. Gill nets must have a minimum mesh size of 3 inches or greater. Gill nets with square mesh greater than 4.0 and less than 6.0

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inches are prohibited except on the Mississippi River where square mesh greater than 4.0 and less than 5.0 inches are prohibited with a minimum mesh size of three (3) inches on the square. The maximum length of a gill net is three hundred (300) yards. Gill nets must be fished in a stationary manner except in the Mississippi River.

6. Fish Seine

A fish seine consists of a float and lead line to which netting is attached. The netting of the seine shall be constructed of twine not smaller than Number 7 nylon or synthetic fiber or Number 9 cotton or linen. The mesh size of seines shall be three (3) inches or larger on the square. Seines must be constantly attended, and may not be fished in a stationary manner.

7. Turtle Traps

A turtle trap is defined as a trap made of linen or cotton netting, wood or cane slats or strips, wire, or other similar materials with a minimum mesh size of three (3) inches on the square. Such traps must be constructed in a way as to permit the escape of fish through the three (3) inch openings. Turtle traps as defined herein may only be used in waters open to commercial fishing. Turtle traps must be set so that a portion of the catching area is positioned above the water.

8. Cast Net

A cast net is defined as a net having a maximum radius of ten (10) feet and a mesh size (square measure) of not less than one-fourth ($\frac{1}{4}$) inch and not greater than one (1) inch.

9. Trotline

A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must be at least 24 inches apart.

10. Dip Net

A dip net is a net constructed from natural or synthetic fibers which is attached to a frame that is attached to a pole. A dip net may only be used to commercially harvest turtles from Reelfoot Wildlife Management Area.

SECTION V. REPORT REQUIREMENTS

Commercial fishers and wholesale fish dealers are required submit monthly reports to the Tennessee Wildlife Resources Agency as instructed. Commercial fishers are required to provide TWRA with requested information and samples for all fish or turtles (or parts thereof) which they harvest from Tennessee waters or import into Tennessee. Requested information shall be reported on forms provided by TWRA and these forms must be completed within 24 hours of harvest. Commercial fishers must notify TWRA on the appropriate form if they did not harvest fish or turtles (or parts thereof) during a month. Wholesale fish dealers are required to provide TWRA with requested information and samples for all fish or turtles (or parts thereof) which they receive from commercial fishers, wholesale fish dealers, or nonresident equivalents. Wholesale fish dealers must indicate the quantity of fish or turtles (or parts thereof) that they receive from a commercial fisher on a receipt issued by the commercial fisher. Wholesale fish dealers must sign and date these receipts within 24 hours of receiving the product. Wholesale fish dealers must satisfy the commercial fishing reporting requirements as instructed by TWRA for nonresidents who supply

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them with fish or turtles (or parts thereof) harvested out-of-state. Wholesale fish dealers must notify TWRA on the appropriate form if they did not receive fish or turtles (or parts thereof) during a month. Commercial fishers and wholesale fish dealers must retain a copy of all receipts and forms for a period of two years, and make them available for inspection by TWRA. Commercial fishers and wholesale fish dealers must contact the Fisheries Management Division within 5 days upon purchasing a license and request the required forms.

Commercial fishers importing or exporting commercial fish or turtles (or parts thereof) into or out of Tennessee must have bills of lading denoting the quantity of product, name and address of supplier, name of water body from which product was harvested, and date of import/export. A copy of the bill of lading must be in the possession of the person importing or exporting the product. Commercial fishers must retain a copy of each bill of lading for a period of two years, and make it available for inspection by TWRA.

SECTION VI. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 02-13, dated September 26, 2002 (amended by proclamation 03-02, dated March 2, 2003). Proclamation 05-0022 will be effective immediately.

Proclamation 05-22 received and recorded this 17th day of October, 2005. (10-20)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

**PROCLAMATION 05-25
AMENDING PROCLAMATION 05-16
IMPORTATION OF CERVID CARCASSES AND PARTS**

Pursuant to the authority granted by Tennessee Code Annotated, Section 70-1-206 and 70-4-107, the Tennessee Wildlife Resources Commission hereby amends Proclamation 05-16 by inserting "West Virginia" and by inserting at the end of the list the statement "and any other state or province where a positive case of CWD has been detected as confirmed by USDA or CFIA" so that as amended the paragraph shall read:

"The following U.S. states, portions of states, and Canadian provinces are proclaimed to be CWD positive and are therefore regulated by rule 1660-1-15:

Colorado	Oklahoma*
Illinois (that portion north of Interstate 80)	South Dakota
Kansas*	Utah
Minnesota*	West Virginia
Montana*	Wisconsin
Nebraska	Wyoming
New Mexico	Alberta*
New York	Saskatchewan
And any other state or province where a positive case of CWD has been detected as confirmed by USDA or CFIA.	

* States and provinces where CWD has been found in captive cervids only."

Proclamation No. 05-25, received and recorded this 17th day of October, 2005. (10-21)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660 SPORT FISHING PROCLAMATION 05-26

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission proclaims the following regulations effective March 1, 2006.

SECTION I. ENDANGERED SPECIES, GENERAL SEASONS, CREEL AND POSSESSION LIMITS, AND MINIMUM LENGTHS

A. ENDANGERED SPECIES

All fish identified as endangered or threatened or listed as in need of management as proclaimed by the Tennessee Wildlife Resources Commission may not be taken.

B. GAME FISH SPECIES

The season is open year-round on the following species, unless otherwise specified in this proclamation. The possession limit is twice the daily creel limit.

Only the daily creel limit may be possessed while afield. It shall also be unlawful to possess while afield any fish, which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Rock bass	20	No length limit
Black bass (all species in combination)	5	No length limit
Except as listed below and in Section V, VI, and VII.		
All species from Reelfoot Lake, Reelfoot		
Watershed Lake #18, Gooch Unit E		15"
All species from Indian Boundary Lake	2	14"
Largemouth and smallmouth bass from		
Watauga Reservoir		12"
Largemouth bass and smallmouth bass from		
Cheatham, Old Hickory, and Melton Hill Reservoirs		14"
Largemouth and smallmouth bass from Boone, Barkley,		
Center Hill, Cherokee, Kentucky, Percy Priest,		
Pickwick, and Normandy Reservoirs		15"
Largemouth bass from Dale Hollow, Chickamauga, Nickajack,		
Watts Bar, and Tims Ford Reservoirs		15"
Largemouth bass from Fort Loudoun, Tellico,		
Parksville, and Norris Reservoirs		14"
Smallmouth bass from Fort Loudoun, Norris, Tellico,		
Tims Ford, and Watts Bar Reservoirs		18"
Smallmouth bass from Dale Hollow	2	16-21" Slot*
*One smallmouth bass under 16" and one smallmouth bass over 21"		
Smallmouth bass from Chickamauga, Nickajack,		
and Gunter'sville Reservoirs	1	18"
Smallmouth bass from Douglas Reservoir, Pigeon River		

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(from the confluence with the French Broad River to North Carolina state line), and Little Pigeon River (including East and West Prongs) to GSMNP boundary ..	1	20"
Spotted bass from Norris, Cherokee, Fort Loudoun, Boone, Ft. Patrick Henry, South Holston, Melton Hill, Tellico, John Sevier, Davy Crockett, Watauga, Chilhowee, and Calderwood Reservoir	15	

NOTE: For this proclamation, a spotted bass is defined as any black bass that has patch of teeth on the center portion of the tongue.

*See Special Definitions (Section XVI) for Reservoir boundary and specific area descriptions of Cherokee, Dale Hollow, Douglas, Norris, and Boone Reservoirs where size limits on smallmouth bass and largemouth bass apply.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Sauger except as listed below	10	15"
From Kentucky Lake.....		14"
Walleye except as listed below	5	16"
Walleye from South Holston and Watauga Lakes.....		18"
Walleye from Tellico Reservoir		15"*
*only one walleye can be 24" or longer		
Walleye or sauger or in combination		
From Cherokee, Chilhowee, Douglas, Fort Loudoun, Melton Hill, and Tellico Reservoirs and their tributaries	10	15"
Walleye or sauger or in combination		
From Norris Reservoir and its tributaries (upstream to Grissom Island on the Clinch River)	5	15"
Walleye, sauger or saugeye or in combination		
From Normandy Reservoir and its tributaries	15	15"

NOTE: For this proclamation, any walleye-sauger hybrid (saugeye) is considered the same as a sauger.

Striped bass or Cherokee bass (striped bass x white bass hybrid), or in combination. Except as listed below:	2	15"
On Norris Reservoir during April through October statewide regulations apply. Effective through February 2008, during November through March the creel and size limits are	1	36"
On Cordell Hull and Melton Hill Reservoirs		32-42" slot*
*only 1 striped bass per day can be over 42"		
On Cherokee Reservoir-see SECTION II. WATERS WITH CLOSED SEASONS		
Muskellunge except as listed below	1	36"
Muskellunge from Melton Hill Reservoir		44"
Crappie (white and black combined) except as listed below	30	10"
From private waters		No length limit
From Mississippi River		No length limit
(river proper, sloughs and oxbows, the Hatchie,		

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Loosahatchie, Forked Deer, Wolf, and Obion River and their tributaries		
From Norris Reservoir	10	10"
From Dale Hollow, Center Hill, Douglas, Watauga, Cherokee, South Holston, Ft. Patrick Henry, John Sevier, Boone Reservoirs	15	10"
From Pickwick and Guntersville Reservoirs		9"
From State Park Lakes, Reelfoot Lake, Indian Boundary and Davy Crockett Reservoirs		No length limit
White bass	15	No length limit
Northern pike		No limits
Yellow bass		No limits
Bluegill and other bream (except as listed below)		No limits
From Norris Lake	30	No length limit
Pickereel		No limits
Yellow perch		No limits
Trout (combined daily creel limit-all trout) except as listed below	7	6"*
6" size limit is for brook trout only		
Lake trout	2	

C. NONGAME FISH SPECIES

	DAILY	MINIMUM
MAXIMUM		
LENGTH	LIMIT	LENGTH
Non-game species except as listed below and in Section V, VI and VIII		
Catfish (blue, channel, and flathead)	No limits	34"*
*only 1 catfish per day greater than 34"		
Catfish (blue and channel) when taken from Allen Branch Pond, and Indian Boundary Lake		
Beech River Watershed Lakes	5	15"
Paddlefish may be harvested from April 24 to May 31, no culling	2	No length limit
Paddlefish exception: Cherokee Reservoir, March 1 through March 15	1	30"

SECTION II. WATERS WITH CLOSED SEASONS

A. Land Between the Lakes Wildlife Management Area:

All waters open year-round, except the following:

- (a) Farm ponds – Open to fishing except those ponds posted as closed.
- (b) Bards Lake – Trotlines and limb lines prohibited. Jugs permitted from October 1 through March 21 with a limit of 10 per person.

B. Catoosa Wildlife Management Area

All streams and ponds are open from April 1 through December 31, except on dates of managed big game and turkey hunts.

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- C. Woods Reservoir: See Proclamation 74-17 for areas closed to fishing
- D. Buffalo Creek (Grainger County): Closed to all fishing and minnow seining from the mill dam upstream.
- E. Doakes Pond (Norris Reservoir) – That portion of Norris Reservoir known as Doakes Pond (a subimpoundment), located adjacent to Highway 63 approximately 9 miles NE of Lafollette, is closed to fishing.
- F. South Holston Reservoir: Closed to trout fishing December 1 through the last day of February.
- G. Center Hill Lake and Tributaries – Closed to taking or possessing of paddlefish.
- H. Clear Creek (tributary to the Clinch River, Anderson County) – closed to all fishing including minnow seining from Highway 441 upstream to the second dam (adjacent to the City of Norris Water Tower), as posted, from November 1 through March 31.
- I. All TWRA and USFWS hatchery ponds and raceways are closed to fishing year-round.
- J. South Holston Tailwater – Closed to all fishing from November 1 through January 31 in the following areas:
 - (1) Hickory Tree Bridge upstream to the confluence with Bottom Creek.
 - (2) Downstream point of Boy's Island (the first island downstream of Weaver Pike Bridge) upstream to the top of the first island above Webb Road Bridge.
- K. On Cherokee Reservoir, a closed fishing zone will be in effect from July 15 through September 15. This zone is enclosed by lines from the boat ramp at the south end of the dam across the lake to Point 2, from Point 2 to Point 3, and from Point 3 back across the lake to the TWRA boat ramp at the north end of the dam. All bank fishing will be open and the coves along the southeast shoreline will be open to boat fishing, but no fishing for any species will be allowed in the described zone from July 15 through September 15.
- L. Douglas Reservoir – Henderson Island WMA rearing pond closed to fishing year-round.

SECTION III. CHEROKEE WILDLIFE MANAGEMENT AREA – SPECIAL REGULATIONS

- A. Tellico Area – Daily Permit Required
 - Tellico River from its confluence with Turkey Creek upstream to the Tennessee-North Carolina state line during the period March 15 through September 15.
 - Citico Creek upstream from its confluence with Little Citico Creek during the period March 15 through September 15.
 - Green Cove Pond (See Section III-F)
- 1. Fishing permitted year-round. Closed on Thursday and Friday during the period March 15 through September 15 (except when national or state holidays fall on Thursday and Friday). From September 16 through March 14 fishing is allowed every day and no permit is required.
- 2. Daily limit – 7 trout; possession limit – 14 trout.
- 3. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset. The possession of fishing equipment and/or tackle is prohibited on stream banks except during legal fishing hours.

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4. Each fisherman permitted only one rod or pole.

B. Wild Trout Streams

Group I

- North River and tributaries
 - Bald River and tributaries
- North Fork of Citico Creek and tributaries
 - South Fork of Citico Creek and tributaries
 - Laurel Fork and tributaries on Cherokee WMA beginning at the cable crossing ½ mile upstream from the USFS Dennis Cove Recreation Area and extending upstream
 - Gee Creek and tributaries in Polk County
 - Wolf Creek and tributaries in Polk County
 - Beaverdam Creek and tributaries from its confluence with Birch Branch downstream to Tank Hollow Road (USFS Rd. 6044)
 - Paint Creek and tributaries in Greene County-from USFS campground upstream to U.S. Forest Service Boundary line south of Highway 70 near Munday Gap.

1. Fishing permitted year-round.
2. Daily limit – 3 trout; possession limit – 6 trout.
3. Size limit – Rainbow and brown trout – 9 inches minimum length
Brook trout – 6 inches minimum length
4. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
5. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset.
6. Each fisherman permitted only one rod or pole.

Group II

- Rocky Fork Creek and tributaries on lands owned by SF Rocky Fork Holdings, Inc.
 - Higgins Creek and tributaries
 - Squibb Creek and tributaries
 - Sarvis Cove and tributaries
 - Dry Creek and tributaries (Greene County) upstream from the U.S. Forest Service boundary
 - Sycamore Creek and tributaries
 - Rough Ridge Creek and tributaries
 - Little Jacob Creek (Sullivan County)
 - Left Prong Hampton Creek (Carter County)
1. Fishing permitted year-round.
 2. Daily limit – 7 trout; no more than 3 may be brook trout
Possession limit – 14 trout; no more than 6 may be brook trout
 3. Size limit – Rainbow and brown trout – no minimum length limit
Brook trout – 6 inch minimum length limit

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4. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
 5. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset.
 6. Each fisherman permitted only one rod or pole.
- C. Calderwood Reservoir
1. Appropriate licenses from Tennessee or North Carolina are legal on the entire reservoir while fishing from a boat.
 2. Fishing permitted year-round.
 3. Size limit – none.
 4. Daily limit – 7 trout; possession limit – 14 trout
 5. Trotlines and limblines prohibited.
- D. Slickrock Creek
- That portion of Slickrock Creek which constitutes the boundary between the states of Tennessee and North Carolina.
1. Appropriate licenses from Tennessee or North Carolina are valid on this portion of Slickrock Creek.
 2. Fishing permitted year-round.
 3. Daily limit – 4 trout; possession limit – 8 trout.
 4. Size limit – Rainbow, brown, and brook trout – 7 inches minimum.
 5. Fishing permitted ½ hour before official sunrise and ½ hour after official sunset.
 6. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
 7. Each fisherman permitted only one rod or pole.
- E. All other streams in the Cherokee Wildlife Management Area not listed above.
1. Fishing permitted daily.
 2. Daily limit – 7 trout; possession limit – 14 trout
 3. Each fisherman permitted only one rod or pole.
- F. Green Cove Pond

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Fishing permitted year-round. Closed on Thursday and Friday (except when national or state holidays fall on Thursday or Friday) year-round.

1. Fishing limited to handicapped individuals (see Section XVI), children under age 13 and adults 65 years of age and older.
2. Tellico-Citico daily permit required year-round.
3. Season is open year-round.
4. Days closed – Thursday and Friday (except open on all state and national holidays and scheduled special organized handicapped or children fishing events).
5. Creel limit – 7 trout per day.
6. Size limit – no restrictions.
7. Hours open – ½ hour before sunrise to ½ hour after sunset.
8. Bait restrictions – no minnows.

SECTION IV. TROUT FISHING – SPECIAL REGULATIONS

A. Quality Trout Fishing Areas:

The areas listed below are designated as quality trout fishing areas and have regulations as described in a., b., c., and d. below.

1. Hiwassee River: That portion of the Hiwassee River from the L&N Railroad Bridge upstream to the U.S. Forest Service's "Big Bend Parking Area".
2. Watauga River: That portion of the Watauga River from Smalling Bridge downstream to the CSX Railroad bridge.
 - a. Daily limit – 2 trout; Possession limit – 2 trout.
 - b. Size limit – 14 inch minimum length.
 - c. Use or possession of any bait other than artificial lures is prohibited.
 - d. Trout less than 14 inches in length may not be possessed within quality trout fishing areas.

B. City of Gatlinburg:

1. Waters Open:

The taking of trout is permitted within the streams designated below and under the limits and during the times contained herein:

a. General Streams

- West Prong Little Pigeon River from Park Boundary to Gnatty Branch except those sections set aside as Children's Streams.
- Dudley Creek from Park Boundary to West Prong Little Pigeon River, except those sections set aside as Children's Streams.

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- Roaring Fork upstream to the Park Boundary.
- Leconte Creek from Painter Branch to West Prong Little Pigeon River.
- b. Children's Streams (may only be fished by children 12 and under)
 - Leconte Creek from Painters Branch upstream to Park Boundary.
 - West Prong Little Pigeon River from 100 yards above entrance of Herbert Holt Park downstream to Gatlinburg By-pass Bridge.
 - Dudley Creek from Highway 441 Bridge to West Prong Little Pigeon River.

2. Season and Creel Limits:

- a. Fishing permitted year-round, except on Thursday, from ½ hour before official sunrise to ½ hour after official sunset.
 - 1) From December 1 through March 31:
 - (a) Possession of any trout shall be prohibited
 - (b) All trout caught must be immediately returned to the water
 - (c) Use or possession of bait is prohibited. Use or possession of any artificial lures other than single hook artificial flies, spinners, and spoons is prohibited. The use of one dropper fly having a single hook which is separated from a legal lure by a length of line is permissible.
 - 2) From April 1 through November 30:
 - (a) Daily creel limit shall be five (5) trout.
 - (b) Total possession limit shall not exceed twice the daily creel limit
 - (c) While fishing or when afield, possession of more than the daily creel limit shall be prohibited, regardless of whether the trout are fresh, stored in an ice chest, in a vehicle, or otherwise preserved.
- b. Creel Limits
 - General Streams – the creel limit is five (5) trout per day.
 - Children's Streams - the creel limit is two (2) per day for children twelve (12) and under.
- c. Methods: Fishing is permitted with one hand-held rod and single hook only.
- d. Daily Fees
 - 1) In addition to the State licensing requirement, all Tennessee Residents ages 13 through 64 must possess a special Gatlinburg daily permit. The permit fee is \$2.00; provided that a non-resident may purchase a 1-day all inclusive permit, in lieu of the normal license/permit combination for a total fee of \$10.00. Non-residents under the age of 13 are exempt from the Gatlinburg daily permit.

C. Dale Hollow Reservoir

- 1. April 1- October 31 – Daily creel limit – 7 trout
No more than 2 may be lake trout – no size limit
- 2. November 1 – March 31 – Daily creel limit – 2 trout
Minimum size limit – 22 inches

D. Horse Creek (Greene County)

That portion from the U.S. Forest Service boundary line upstream to the junction of Squibb Creek.

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Creel limit: 7 per day except from May 1 – September 30, when the limit is 2 per day.

E. South Fork of the Holston River

From the South Holston Dam to Highway 37 Bridge at Bluff City

-- 16-22 inch slot (protected length range) – 7 trout, only 1 of which can be over 22 inches.

F. Delayed Harvest Areas: In the areas listed below, the harvest or possession of trout will be prohibited during the catch-and-release season. During the catch-and-release season, only artificial lures are permitted and the use or possession of bait is prohibited.

1. Paint Creek – Paint Creek Campground downstream to mouth at French Broad River.
Catch-and-release season – October 1 through the last day of February.

2. Tellico River – Mouth of Turkey Creek upstream to mouth of North River. Catch-and-release season will be from October 1 through March 14.

G. Big Creek, Goforth Creek, Sheeds Creek, Spring Creek, and Sylco Creek and their tributaries in Polk County.

- Closed to fishing on Fridays from March 1 to July 1 (except state and national holidays)
- Only a single hook lure or a baited single hook is allowed. Use or possession of multiple hook lures or bait is prohibited.
- Fishing permitted ½ hour before official sunrise to ½ hour after official sunset.
- The possession of fishing equipment or tackle is prohibited on stream banks except during legal fishing hours.

H. Hiwassee River from Appalachia Powerhouse to U.S. Forest Service's "Big Bend Parking Area". 14 inch minimum length limit for brown trout, 2 fish daily limit. Does not affect current quality trout fishing area regulations.

I. Caney Fork River and its tributaries from Center Hill Dam to Cumberland River – 18 inch minimum length limit for brown trout, 2 fish daily limit.

SECTION V. WILDLIFE AGENCY LAKES AND WILDLIFE MANAGEMENT AREAS

A. Lakes in the Wildlife Agency Lakes Management System are: Coy Gaither, Bedford, Browns Creek, Carroll, Davy Crockett, Garrett, Gibson County, Graham, Herb Parsons, Laurel Hill, Maples Creek, Marrowbone, VFW, Whiteville, Williamsport, Glenn Springs, and Reelfoot-Indian Creek Watershed Lakes.

B. Seasons, Creel Limits, Size Limits and Hours of Operation

1. Unless noted in Section II, Wildlife Agency Lakes are open year-round. Lakes will be open ½ hour before official sunrise to ½ hour after official sunset. Only authorized personnel may be on Agency Lake property during closed hours, except that Garrett lake is open 24 hours.

2. Creel and Size Limits:

Statewide limits apply except as listed below:

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	DAILY LIMIT	MINIMUM LENGTH
Catfish (blue and channel combined)	5	
from Bedford, Laurel Hill, Williamsport Lakes	5	14"
Black bass (all species)		
from Williamsport Lakes	1	20"
from Glenn Springs, Marrowbone, Bedford, and Gibson County	5	14-18" slot*
*only 1 bass per day greater than 18"		
from Lake Graham, Herb Parsons, Laurel Hill	10	14-18" slot
*only 1 bass per day greater than 18"		
from Davy Crockett Lake	10	
from Browns Creek Lake	5	16-21" slot*
*only 1 bass per day greater than 21"		
Bluegill and redear sunfish (combined): from Laurel Hill, Bedford, Gibson County, Glenn Springs, Williamsport Lakes	20	

- C. Williamsport Lakes:
Whippoorwill Lake is "youth fishing" only. Only youths 16 and under and an accompanying adult may fish.
- D. Laurel Hill Lake: The embayment above the road that lies between the concession building and the campground is a "youth fishing" only fishing area. Youths 16 and under may fish.
- E. Methods for Wildlife Agency Lakes:
1. Except for jug fishing as listed below, only rods and reels, poles, and hand-held lines may be used.
 2. Jug fishing will be permitted daily from April 1 through September 30 except Saturday, Sunday, Memorial Day, Independence Day, and Labor Day, and daily from October 1 through March 31. Jugs are limited to ten (10) per boat. Jugs must be marked with the owner's name and address.
- F. Bridgestone/Firestone Centennial Wilderness WMA Ponds are designated as "youth fishing" ponds. Fishing is permitted for youths 16 years of age or younger who are accompanied by a non-fishing adult (18 years of age or older). Youths are limited to using one (1) pole or rod while fishing. Fishing is permitted during daylight hours only.

Daily creel limits:

Bluegill – 10
Channel catfish – 5
Largemouth bass – 0 (catch and release only)

- G. Egret and Heron Ponds at Williamsport, and the nursery ponds at Laurel Hill Lake are closed to fishing.

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SECTION VI. DEPARTMENT OF ENVIRONMENT AND CONSERVATION MANAGED LAKES

Statewide fishing regulations apply on lakes managed by the Tennessee Department of Environment and Conservation except as listed below:

Black bass from the following lakes must be a minimum of 15”:

- Falling Water (Burgess Falls) Lake, Burgess Falls Natural Area
- Lake Lajoie, Chickasaw State Park
- Lake Placid, Chickasaw State Park
- Byrd Lake, Cumberland Mountain State Park
- Lake Lindsey, David Crockett State Park
- Fall Creek Lake, Fall Creek Falls State Park
- Sullivan’s Pond, Ft. Pillow State Historic Area
- Indian Mt. “B” Lake, Indian Mountain State Park
- Acorn Lake, Montgomery Bell State Park
- Creech Hollow Lake, Montgomery Bell State Park
- Kelly (Standing Stone) Lake, Standing Stone State Park

Black bass from:

- Big Ridge Lake, Big Ridge State Park, must be a minimum of 14”
- Poplar Tree Lake, Meeman-Shelby Forest State Park, 14”-18” PLR (slot limit)
- Travis McNatt Lake, Big Hill Pond State Park, daily creel limit of 10 bass (no size limit)

Black bass fishing on the following lakes is restricted to catch-and-release only; i.e., all black bass caught must be immediately released unharmed:

- Lake Woodhaven, Montgomery Bell State Park

Channel or blue catfish or in combination:

- Daily creel limit of 5

Crappie (white and black combined):

- Daily creel limit of 30
- No minimum size limit

Bluegill and redear sunfish in combination:

- Poplar Tree Lake, Meeman-Shelby Forest State Park – Daily creel limit of 20 fish

SECTION VII. SPECIAL REGULATIONS ON LAKES CONTROLLED BY NON-STATE GOVERNMENTAL AGENCIES

- A. Casper Lake (Shelby County) – the minimum size limit on black bass is 16” and the daily creel limit is 2.
- B. New Lake (Lewisburg) – Black bass: Creel limit – 5; minimum length – 13”. No minimum length limit on crappie. Open ½ hour before official sunrise to ½ hour after official sunset. Only rods and reels and cane poles are permitted.
- C. Campbell Lake (Maury County) – Anglers must follow regulations as posted at the lake.

SECTION VIII. MINNOWS

- A. The catching of minnows for the purpose of sale is prohibited in Cannon, Lincoln, Macon, Moore, Smith, Sumner, and Trousdale counties. The possession limit for minnows taken from

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streams in the above counties is 150 in Cannon, Macon, Smith, Sumner, and Trousdale; 250 in Lincoln and Moore. It shall be unlawful to sell, take for sale, or offer for sale hornyhead minnows (stonerollers) in Carter, Unicoi, Washington, Johnson, Sullivan, and Morgan Counties.

- B. Minnow traps and seines as defined below may be used to catch minnows subject to all laws and regulations governing the catching of minnows.
1. A minnow trap is hereby defined as a device used for the purpose of catching minnows. The mouth opening or openings shall not exceed one and one-half (1 ½") inches in diameter.
 2. A minnow seine is hereby defined as a net having a mesh size no greater than three-eighths (3/8) of an inch on the square, and no greater than ten (10) feet in length.

SECTION IX. TURTLES

A. Species, Creel and Size Limits, and Seasons

1. Only the Common Snapping Turtle – *Chelydra serpentina serpentina* – may be legally taken.
2. All turtles listed as endangered or threatened or listed as "In Need of Management" as proclaimed by the Tennessee Wildlife Resources Commission may not be taken, and include:
 - Bog Turtle – *Clemmys muhlenbergi*
 - Alligator Snapping Turtle – *Macrochelys temminckii*
 - Cumberland Slider – *Trachemys (Pseudemys) scripta troosti*
3. The season is open year-round.
4. The daily limit is 5. The possession limit is twice the daily creel limit. Only the daily creel limit may be possessed while afield.
5. The minimum legal length for the common snapping turtle is 12 inches. For purposes of this proclamation, the length of a turtle is determined by measuring the carapace (upper shell) from front to back.
6. Turtles may be taken by all legal sport fishing methods except archery and spear guns.

Additionally, sport fishermen may take turtles by the use of up to three hoop nets having a minimum mesh size of three-inches (3") on the square in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Lake, Lauderdale, McNairy, Madison, Obion, Perry, Shelby, Stewart, Tipton, and Weakley counties. Each net must be marked with the name and address of the owner. Each net must be set so that a portion of the catch area is above the water.

7. It shall be unlawful to possess while afield any turtle which has been altered to the extent that its species and/or length cannot be determined.
8. At the Reelfoot Wildlife Management Area, all sizes and species of turtles except box turtles and those in Item 2. above may be taken year-round with a daily limit of 5 by legal sport fishing methods.

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SECTION X. GIGGING, GRABBLING, GRAB HOOKING, SNAGGING, TUBBING, ARCHERY, SPEAR-GUN FISHING, DIPPING, AND CAST NETTING.

- A. Season open year-round except as noted below.
- B. All waters open except:
 - 1. Within 100 yards below dams except at Pickwick the closed area will extend downstream to the first moorage cell located across from the boat launching ramp. At John Sevier Steam Plant the discharge channel is also closed. Dipping and cast netting are excluded from this restriction.
 - 2. Those areas closed to fishing listed in Section II.
 - 3. All waters closed by separate proclamation.
 - 4. Norris Reservoir between River mile 32 (Point 15) and the highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30. Cast netting is excluded from this restriction.
 - 5. Watauga Reservoir Tributaries – Closed from January 1 to April 30. The Elk River in Carter County from the Highway 321 Bridge downstream to RM3.0 (Point 11) on the Elk River Arm of Watauga Reservoir, Doe Creek (Old Cabin Private Road downstream to Roan Creek), Roan Creek (Mountain Lake Estates Bridge downstream to Doe Creek), and Watauga River (NC line downstream to end of Cownstown Road). Cast netting is excluded from this restriction.
 - 6. Snagging prohibited year-round on the South Holston tailwater (from South Holston Dam to the headwaters of Boone Reservoir) and Center Hill Reservoir.
 - 7. All streams in the following counties closed year-round to gigging, but are open to all other methods identified in Section X.
 - Bedford -- Lawrence -- Maury
 - Giles -- Lewis -- Wayne
 - Hickman -- Marshall
 - 8. East Fork Obey River and tributaries closed January 1 through April 30.
- C. Species which may be taken:
 - 1. Non-game species – See Section I.C.
- D. Methods Defined:
 - 1. Gigging: The taking of fish by means of hand-held pole or spear with a tip consisting of a single sharpened point or one or more sharpened barbed points; including, but not limited to gear known as the Hawaiian Sling.
 - 2. Grabbling: The taking of fishes with the hands.

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3. Grab Hooking: The taking of fishes using one more single, double, or treble hooks fastened directly to a pole or rod in such a manner that they are not separated from pole or rod by a length of line.
4. Snagging: The taking of fishes using one or more single, double, or treble hooks which are manipulated or jerked through the water in such a manner as to impale or hook fishes.
5. Tubbing: The taking of fishes using a tub or like device which has neither top or bottom.
6. Archery: The taking of fishes using long, recurve, and compound bows using arrows withbarbed points; crossbows are prohibited.
7. Spear-gun Fishing: The taking of fishes using a spear-gun. A spear gun is any device designed to propel a spear through water and is drawn or held by mechanical device.
8. Dipping: Taking of fishes using a dip net.
9. Cast Netting: The taking of fishes by throwing and retrieving a cast net having a maximum radius of 10 feet and with a mesh size (square measure) of not less than one-fourth (1/4") and not greater than one (1) inch.

SECTION XI. SLAT BASKETS

- A. A slat basket is defined as a device used for taking non-game fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats which are placed lengthwise and so constructed that there must be a minimum of four (4) openings in the catching area, each being at least 1 ½" wide and 6" long.
- B. Slat baskets as defined above and properly tagged shall be legal in all public waters except TWRA Managed Lakes.
- C. Season open year-round.
- D. Only non-game fish may be taken. See Section I.C.
- E. Only one basket tag will be issued to an individual.
- F. Possession or use of more than one slat basket is prohibited.

SECTION XII. TROT LINES, LIMBLINES AND JUGS

- A. Season open year-round except as noted in Section II and Section V.
- B. All waters open except as follows:
 1. Sport fishing trotlines, limblines, and jugs prohibited within 1,000 yards below any TVA or Corps of Engineers dam.
 2. Allen Branch Pond, Indian Boundary Lake, and Chilhowee (McKamy Pond) in Cherokee Wildlife Management Area closed to jug fishing and trotlines. Indian Boundary Lake is also closed to limblines.

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3. Trotlines prohibited in the Beech River Watershed Development Authority lakes, in the New Johnsonville Steamplant Harbor, and within 50 yards of the Danville Railroad Bridge dikes.
 4. Bards Lake on Land Between the Lakes closed to trotlines and limblines.
 5. Trotlines, limblines, and jugs prohibited on Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
- C. Methods Defined:
1. Trotline: A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must not be closer than 24 inches.
 2. Limblining: The use of no more than one hook on a single line suspended from a tree or shrub limb, or from a pole imbedded in or braced on the bank, with a maximum of 25 limblines per licensed angler.
 3. Jug Fishing: The use of a hook connected by a length of line to a floating buoy (jug).
- D. All species may be taken.
- E. Creel limit on game fish same as statewide; non-game species – no limit (except that no paddlefish may be harvested).
- F. Other Restrictions:
1. Sport fishing trotlines, limblines, and jugs must be tagged and/or marked with the owner's name and address. On trotlines, the tag must be placed on the line within 5 feet of the bank, if the trotline is attached to a bank. On floating trotlines the information shall be marked on the floats. In all situations, the tag must be placed within 5 feet of either end. On limblines, the tag must be affixed to the line above the water level.
 2. Sport fishing trotlines, limblines, and jugs must be run at least once each day.
 3. Sport fishermen limited to 50 jugs or blocks each except New Johnsonville Steam Plant Harbor and Bards Lake, where the limit is ten (10) jugs or blocks per sport fisherman and on Beech River Watershed Development Authority Lakes where the limit is twenty (20) jugs or blocks per boat. On Bards Lake, jugs are permitted only from October 1 through March 21.
 4. Sport fishing trotlines, limblines, and jugs not fished according to these regulations are subject to be removed by Agency personnel.

SECTION XIII. SHAD TRAWLING

- A. Season: Year-round.
- B. Waters Open – All waters except within 1,000 yards below any dam.

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- C. Method Defined: The taking of threadfin or gizzard shad using a trawl having a mesh size no larger than 1 inch, a hoop diameter no larger than 48 inches, and a net length no longer than 72 inches.
- D. Shad collected cannot be sold.

SECTION XIV. **SPECIAL RESTRICTIONS**

- A. Reelfoot Lake. During April and May, the use of gasoline engines to propel boats in selected areas of Reelfoot Lake as posted by TWRA signs is prohibited.
- B. Center Hill Reservoir
 - 1. On the upper end of Center Hill Reservoir including Caney Fork River beginning at Rock Island State Park boat launching ramp and extending upstream to Great Falls Dam, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. No more than 3 rods and reels or poles may be used.
- C. Dale Hollow Reservoir
 - 1. Compton Boat Ramp upstream to Hwy 52 bridge on the East Fork Obey River Arm, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30.
 - 2. No more than 3 rods and reels or poles per boat angler and 6 rods and reels or poles per bank angler may be used.
- D. Watauga Reservoir Tributaries
 - 1. Anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. The Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Pt. 11) on the Elk River Arm of Watauga Reservoir, Doe Creek (Old Cabin Private Road downstream to Roan Creek), Roan Creek (Mountain Lake Estates Bridge downstream to Doe Creek), and Watauga River (NC line downstream to the end of Cownstown Road).
- E. Umbrella Rig Restriction – Umbrella rigs are defined as an array of more than 3 artificial lures or baits (with or without hooks) used by a single rod and reel combination. If the hook size is 6 or larger, then only one lure or bait may have a hook and that hook must be a single hook.

SECTION XV. **SPECIAL DEFINITIONS**

- A. Game Fish:
The following fish are designated as game fish:

Family – Centrarchidae
All fish in the family Centrarchidae, including those listed below and all hybrids, are designated as game fish.

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Largemouth bass	<u>Micropterus salmoides</u> (Lacepede)
Smallmouth bass	<u>Micropterus dolomieu</u> (Lacepede)
Spotted bass	<u>Micropterus punctulatus</u> (Rafinesque)
Redeye bass	<u>Micropterus coosae</u> (Hubbs and Bailey)
White crappie	<u>Pomoxis annularis</u>
Black crappie	<u>Pomoxis nigromaculatus</u> (Lesueur)
Rock bass	<u>Ambloplites rupestris</u> (Rafinesque)
Warmouth	<u>Lepomis gulosus</u> (Cuvier)
Bluegill	<u>Lepomis macrochirus</u> (Rafinesque)
Redear sunfish	<u>Lepomis microlophus</u> (Gunther)
Longear sunfish	<u>Lepomis megalotis</u> (Rafinesque)
Green sunfish	<u>Lepomis cyanellus</u> (Rafinesque)
Flier	<u>Centrarchus macropterus</u> (Lacepede)
Redbreast sunfish	<u>Lepomis auritus</u> (Linnaeus)
Pumpkinseed	<u>Lepomis gibbosus</u> (Linnaeus)
Orangespotted sunfish	<u>Lepomis humilis</u> (Girard)
<u>Family – Percichthyidae</u>	
Striped bass	<u>Morone saxatilis</u> (Walbaum)
Cherokee bass (Striped bass-hybrid)	White bass
Yellow bass	<u>Morone chrysops</u> (Rafinesque)
	<u>Morone mississippiensis</u> (Jordan and Eigenmann)
<u>Family – Percidae</u>	
Walleye	<u>Stizostedion vitreum</u> (Mitchill)
Sauger	<u>Stizostedion canadense</u> (Smith)
Walleye-Sauger hybrid (Saugeye)	<u>Stizostedion</u> sp.
Yellow perch	<u>Perca flavescens</u> (Mitchill)
<u>Family – Esocidae</u>	
All fish in the family Esocidae, including those listed below and all hybrids, are designated as game fish.	
Muskellunge	<u>Esox masquinongy</u> (Mitchill)
Northern Pike	<u>Esox lucius</u> (Linnaeus)
Chain pickerel	<u>Esox niger</u> (Lesueur)
Grass pickerel	<u>Esox americanus</u> (Lesueur)
<u>Family – Salmonidae</u>	
All fish in the family Salmonidae, including those listed below and all hybrids, are designated as game fish.	
Rainbow trout	<u>Oncorhynchus mykiss</u>
Brown trout	<u>Salmo trutta</u> (Linnaeus)
Brook trout	<u>Salvelinus fontinalis</u> (Mitchill)
Lake trout	<u>Salvelinus namaycush</u> (Walbaum)
Ohrid trout	<u>Salmo letnica</u>

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B. Non-Game Species:

All species except those listed as game fish and those proclaimed by the TWRC to be endangered, threatened, or in need of management.

C. Hooks Defined:

Hooks are defined as follows:

- Single hook – 1 point
- Double hook – 2 points
- Treble hook – 3 points

D. The use of rods and reels, poles, hand-held lines, and other devices and methods described in this proclamation are the only legal means of sport fishing.

E. Reservoir full pool level is the reservoir/stream boundary for harvest restrictions, unless otherwise noted.

F. Norris Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the Highway 25E bridge on the Clinch River Arm and upstream to Gap Creek on the Powell River Arm.

G. Boone Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the 11E Bridge at Bluff City on the South Fork Holston River Arm and upstream to the new Austin Springs Bridge on the Watauga River.

H. Cherokee Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, shall extend upstream to the John Sevier Dam.

I. Douglas Reservoir:

For purpose of size and creel restrictions on smallmouth bass and crappie, extends upstream to the ENCA dam on the Nolichucky River and to the mouth of the Pigeon River on the French Broad River.

J. Dale Hollow Reservoir:

For purpose of size and creel restrictions on smallmouth bass, extends upstream on the Wolf River arm to the South Ford Road Bridge near Sulphur Springs.

K. Handicapped – any person who is mentally impaired or physically impaired (including blindness) because of injury or disease, congenital or acquired, which permanently renders him/her so severely disabled as to be unable to move without aid of crutches or a wheelchair, or a person who has 80% permanent impairment of a hand or arm as determined by a physician using the standards outlined in the “Guide to Evaluations of Permanent Rating”, published by the AMA or other acceptable rating system.

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- L. Bait – any living or dead organism, or prepared substance designed to attract fish by taste or odor. For the purpose of this proclamation, bait includes, but is not limited to, fish, fish eggs, crayfish, worms, grubs, crickets, corn, cheese, bread, pork rinds, putty or paste-type products, and flavors or scents applied to or impregnated into artificial lures.

SECTION XVI. SHOOTING FISH AND TURTLES

Shooting fish and turtles with firearms is prohibited.

SECTION XVII. SALE OF FISH AND TURTLES

It is illegal to sell or offer for sale fish and turtles taken under authority of this proclamation.

SECTION XVIII. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 4-18, dated December 7, 2004.

Proclamation 05-26 received and recorded this 31st day of October, 2005. (10-43)



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 October 3, 2005 and ending October 31, 2005.

A handwritten signature in black ink, reading 'Riley C. Darnell'.

RILEY C. DARNELL
Secretary of State