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RILEY C. DARNELL
Secretary of State

Division of Publications
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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*.

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

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

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pg. iv

TABLE OF CONTENTS

ANNOUNCEMENTS

Financial Institutions, Department of
Announcement of Formula Rate of Interest 1
Announcement of Maximum Effective Rate of Interest 1
Government Operations Committees
Announcement of Public Hearings 2
Health Facilities Commission
Notice of Beginning of Review Cycle 6

EMERGENCY RULES

Emergency Rules Now in Effect 9

PROPOSED RULES

Agriculture, Department of 11

PUBLIC NECESSITY RULES

Public Necessity Rules Now in Effect 13

RULEMAKING HEARINGS

Counselors, Marital and Family Therapists, and Clinical Therapists, Board for 15
Dentistry, Board of 18
Environment and Conservation, Department of 22
Health, Department of 57
Medical Examiners, Board of 59
Mental Health and Developmental Disabilities, Department of 60
Podiatry, Board of 67
Social Worker certification and Licensure, Board of 69

CERTIFICATION 73

CHANGE OF ADDRESS FORM 75

ORDER FORM 77

blank

pg. vi

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 8.25%.

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

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 April 2003 is 8.82 per cent 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 4.82 per cent.

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.

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of February 2003. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

02-03	Feb 7, 2003	0780 Commerce And Insurance Division Of Insurance	Rulemaking Hearing Rules	New Chapter	<i>Chapter 0780-1-71 Life Settlements</i>	Maliaka Bass EssamelDin 312 8th Ave N 25th Fl TN Twr Nashville TN 37243 615-741-2199	April 23, 2003
02-04	Feb 12, 2003	0800 Labor and Workforce Development Occupational Safety and Health	Proposed Rules	Amendments	<i>Chapter 0800-1-3 Occupational Safety and Health Record-Keeping and Reporting</i> 0800-1-3-.03 Recordkeeping Forms and Recording Criteria	Michael M. Maenza Occupational Safety and Health 3rd Fl Johnson Twr 710 James Robertson Pkwy Nashville, TN 37243- 0659 (615) 741-7036	June 27, 2003
02-05	Feb 13, 2003	0780 Commerce and Insurance Division of Fire Prevention	Rulemaking Hearing Rules	Amendments	<i>Chapter 0780-2-15 Blasting Standards</i> 0780-2-15-.01 Definitions 0780-2-15-.02 Minimum Standards for Blasting; Adoption by Reference 0780-2-15-.03 Registration and Fees 0780-2-15-.04 Classifications of Registration 0780-2-15-.05 Continuing Education 0780-2-15-.06 Blasting Restrictions 0780-2-15-.07 Blasting Storage and Destruction of Materials 0780-2-15-.08 Phosphoric Materials or Binary Materials	M. Connaught O'Connor TN Twr 25th Fl 312 8th Ave N Nashville, TN 37243 615-741-3072	April 29, 2003
02-06	Feb 18, 2003	1200 Health Board For Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-21 Alcohol And Other Drugs Of Abuse Non-Residential Narcotic Treatment Facilities</i>	John Dalton OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247- 0120 615-532-7179	May 4, 2003

02-07	Feb 18, 2003	0460 Dentistry	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0460-1 General Rules</i></p> <p><i>Chapter 0460-2 Rules Governing the Practice of Dentistry</i></p> <p><i>Chapter 0460-3 Rules Governing Practice of Dental Hygienists</i></p> <p><i>Chapter 0460-4 Rules Governing the Practice of Dental Assistants</i></p>	Nick Aemisegger OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247- 0120 615-741-1611	May 4, 2003
02-09	Feb 18, 2003	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-17 Rules And Regulations Governing the Commercial Use of Wildlife 1660-1-17-.01</i>	Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 615-781-6606	May 4, 2003
02-11	Feb 18, 2003	1200 Health Board for Licensing Health Care Facilities Division of Health Care Facilities	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1200-8-1 Standards for Hospitals 1200-8-1-.08 Building Standards</i></p> <p><i>Chapter 1200-8-2 Standards for Prescribed Child Care Centers 1200-8-2-.07 Building Standards</i></p> <p><i>Chapter 1200-8-6 Standards for Nursing Homes 1200-8-6-.08 Building Standards</i></p> <p><i>Chapter 1200-8-10 Standards for Ambulatory Surgical Treatment Centers 1200-8-10-.08 Building Standards</i></p> <p><i>Chapter 1200-8-11 Standards for Homes for the Aged 1200-8-11-.07 Building</i></p>	John W. Dalton Health OGC 26th Fl TN Twr 212 8th Ave N Nashville, TN 37247- 0120 615-532-7179	May 4, 2003

02-11, cont.				<p>Standards</p> <p><i>Chapter 1200-8-15 Standards for Residential Hospice</i> 1200-8-15-.08 Building Standards</p> <p><i>Chapter 1200-8-17 Alcohol and Other Drugs of Abuse Residential Rehabilitation Treatment Facilities</i> 1200-8-17-.07 Building Standards</p> <p><i>Chapter 1200-8-22 Alcohol and Other Drugs of Abuse Halfway House Treatment Facilities</i> 1200-8-22-.07 Building Standards</p> <p><i>Chapter 1200-8-23 Alcohol and Other Drugs of Abuse Residential Detoxification Treatment Facilities</i> 1200-8-23-.07 Building Standards</p> <p><i>1200-8-24 Standards for Birthing Centers</i> 1200-8-24-.07 Building Standards</p> <p><i>1200-8-25 Standards for Assisted-Care Living Facilities</i> 1200-8-25-.07 Building Standards</p> <p><i>1200-8-28 Standards for HIV Supportive Living Facilities</i> 1200-8-28-.08 Building Standards</p> <p>1200-24-5</p>		
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02-11, cont.					<i>Review of Health Care Facility Construction Plans and Specifications</i> 1200-24-5-.01 Definitions		
02-12	Feb 27, 2003	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (33-635)	Robert L. Powell Division of Superfund 4th Fl Anx, L & C Bldg Nashville, TN 37243-1538 (615)532-0916	May 13, 2003
02-13	Feb 27, 2003	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance sites (58-504)	Robert L. Powell Division of Superfund 4th Fl Anx, L & C Bldg Nashville, TN 37243-1538 (615)532-0916	May 13, 2003

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

Applications will be heard at the April 23, 2003 Health Services and Development Agency Meeting except as otherwise noted.

**Denotes applications being placed on the Consent Calendar.*

+Denotes applications under simultaneous review.

This is to provide official notification that the Certificate of Need applications listed below have begun the review cycle effective February 1, 2003. The review cycle includes a 60-day period of review by the Tennessee Department of Health or the Department of Mental Health and Developmental Disabilities. Upon written request by interested parties the staff of The Health Services and Development Agency shall conduct a public hearing. *Certain unopposed applications may be placed on a "consent calendar." Such applications are subject to a review less than 60 days including a 30-day period of review by the Department of Health or Department of Mental Health and Developmental Disabilities. Applications intended to be considered on the consent calendar, if any, are denoted by an asterisk.* Pursuant to T.C.A., Section 68-11-1609(g)(1) effective May 2002, any health care institution wishing to oppose a Certificate of Need must file a written objection with the Health Services and Development Agency and serve a copy on the contact person no later than fifteen (15) days before the agency meeting at which the application is originally scheduled.

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

NAME AND ADDRESS	DESCRIPTION
Nashville Rehabilitation Hospital 511 Main Street Nashville (Davidson Co.), TN 37206 Jane Andrews – (615)—226-4330 CN0212-125	The replacement and relocation of Nashville Rehabilitation Hospital from 610 Gallatin Avenue to 511 Main Street in Nashville, Tennessee. The hospital is currently licensed for one hundred eleven (111) acute hospital beds; sixty-five (65) medical, thirty-four (34) acute rehabilitation, and twelve (12) geriatric psychiatric. The proposed facility will have ninety (90) acute hospital beds; forty-four (44) medical, thirty-four (34) acute rehabilitation, and twelve (12) geriatric psychiatric. \$ 49,912,000.00
Willowbrook Home Health Care Agency, Inc. 125-A Haven Street Hendersonville (Sumner Co.), TN 37075 Barbara J. Knuutila – (615)—366-6060 CN0301-001	The addition of twenty-two (22) counties to the existing 14-county service area to include Bedford, Clay, Coffee, Franklin, Giles, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Overton, Perry, Putnam, Stewart, Warren, Wayne and White and to relocate the parent office of the home health agency from 125-A Haven Street in Hendersonville (Sumner County), Tennessee to Two International Plaza, Suite 401 in Nashville (Davidson County), Tennessee. If approved, a sister home health agency, Willowbrook Health and Home Services, Inc., also owned by Willowbrook Health Systems, Inc. will discontinue home

NAME AND ADDRESS

DESCRIPTION

health agency services and surrender its license within 180 days of approval to provide services to the mental retardation and developmentally disabled population as a licensed Professional Services Agency under the auspices of the Medicaid Waiver program in the applicant's proposed thirty-six (36) county service area.
\$ 11,250.00

Horizon Medical Center
111 Highway 70 East
Dickson (Dickson Co.), TN 37055
John Wellborn - (615-665-2022)
CN0301-004

The acquisition of a linear accelerator and the initiation of radiation therapy services for its cancer patients at its hospital facility.
\$ 4,660,852.00

Centennial Medical Center
2410 Patte3rson street
Nashville (Davidson Co.), TN 37203
John Wellborn - (615-665-2022)
CN0301-005

The addition of five (5) general hospital beds and the expansion of the inpatient rehabilitation bed complement from 20 general hospital beds to 25 general hospital beds. There will be no net increase or decrease in the medical center's total 688 general hospital and 26 skilled nursing licensed bed complement. The inpatient rehabilitation unit will contain 25 beds, the 20 existing beds and 5 additional beds that are currently allocated to the adult psychiatric bed program. If approved, the hospital's licensed bed complement will be 510 general acute, 101 adult psychiatric, 42 geriatric psychiatric, 10 child/adolescent psychiatric, 25 rehabilitation and 26 skilled nursing for a total of 714 beds. This project will take place on the fourth floor of the Parkview Building on the hospital campus.
\$ 151,200.00

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pg. 8

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0620 - Finance and Administration - Bureau of TennCare - Emergency rules realting to the TennCare Medicaid Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights, Chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (Janaury 2003). Filed December 13, 2002; effective through May 27, 2003. (12-10)
- 0620 - Finance and Administration - Bureau of TennCare - Emergency rules realting to the TennCare Standard Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights, Chapter 1200-13-14 TennCare Standard, 1 T.A.R. (Janaury 2003). Filed December 13, 2002; effective through May 27, 2003. (12-11)
- 1200 - Department of Health - Health and Licensure regulation - Emergency and Medical Services Division - Emergency rules covering procedures for administering chemical agent antidotes or epinephrine in emergency situations, chapter 1200-12-1 Procedures for Administering Chemical Agent Antidotes in Emergency Situations, 11 T.A.R. (October 2002) - Filed October 22, 2002; effective through April 5, 2003. (10-26)
- 1200 - Department of Health - Office of the Commissioner - Emergency rules covering procedures for administering reimbursement of providers of health care services who contract with state agencies, chapter 1200-24-4 Reimbursement of Health Care Provider Costs, 2 T.A.R. (February 2003) - Filed January 2, 2003; effective through June 16, 2003. (01-01)

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pg. 10

PROPOSED RULES

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

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

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

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

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (b) of paragraph (8) of Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by adding parts 7. and 8. so that the amended rule shall read:

7. How do I complete the 300 Log for a hearing loss case? When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss.
8. Rule 0800-1-3-.03(8)(b)7. is effective beginning January 1, 2004.

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

Paragraph (10) of Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by adding subparagraph (c) so that the amended rule shall read:

- (c) This paragraph is effective January 1, 2004. From January 1, 2002 until December 31, 2003, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under Rules 0800-1-3-.03(3), 0800-1-3-.03(4), 0800-1-3-.03(5) and 0800-1-3-.03(27). For entry (M) on the OSHA 300 Log, you must check either the entry for "injury" or "all other illnesses."

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

Part 7. of subparagraph (b) of paragraph (27) of Rule 0800-1-3-.03 Recordkeeping Forms and Recording Criteria is amended by adding subpart (vii) so that the amended rule shall read:

- (vii) The first sentence of Rule 0800-1-3-.03(27)(b)7.(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2004.

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

The proposed rules set out herein were properly filed in the Department of State on the 12th day of February, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 27th day of June, 2003. (02-04)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0020 - Board of Accountancy - Public necessity rule dealing with score requirements and grading provisions for written certified public accountant (“CPA”) examinations, chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements, 11 T.A.R. (November 2002) - Filed October 28, 2002; effective April 11, 2003. (10-35)

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule clarifying the rules governing provider reimbursement as interpreted by the Court of Appeals of Tennessee in River Park Hospital, Inc. v. BlueCross BlueShield of Tennessee, Inc. and Volunteer State Health Plan, Inc., d/b/a BlueCare, No. M2001-00288-COA-R3-CV, chapter 1200-13-12 Bureau of TennCare, 2 T.A.R. (February 2003) - Filed January 2, 2003;effective through June 13, 2003. (01-02)

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Ruleclarifying the rules governing provider reimbursement as interpreted by the Court of Appeals of Tennessee in River Park Hospital, Inc. v. BlueCross BlueShield of Tennessee, Inc. and Volunteer State Health Plan, Inc., d/b/a BlueCare, No. M2001-00288-COA-R3-CV, chapter 1200-13-13 TennCare Medicaid, 2 T.A.R. (February 2003) - Filed January 2, 2003;effective through June 13, 2003. (01-03)

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule clarifying the rules governing provider reimbursement as interpreted by the Court of Appeals of Tennessee in River Park Hospital, Inc. v. BlueCross BlueShield of Tennessee, Inc. and Volunteer State Health Plan, Inc., d/b/a BlueCare, No. M2001-00288-COA-R3-CV, chapter 1200-13-14 TennCare Standards, 2 T.A.R. (February 2003) - Filed January 2, 2003;effective through June 13, 2003. (01-04)

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule protecting the due process rights of persons potentially eligible for medical assistance through the TennCare Standard program., chapter 1200-13-15 Administrative Hearing Unit, 2 T.A.R. (February 2003) - Filed January 29, 2003;effective through July 13, 2003. (01-23)

- 0780 - Commerce and Insurance - Division of Insurance - Public necessity rules dealing with by rule standards and procedures for the administration of pre-licensing education and examination requirements for persons applying to become insurance producers licensed in this state, Chapter 0780-1-74 Pre-Licensing Education and Examination Requirements for Insurance Producers, 1 T.A.R. (January 2003) - Filed December 30, 2002; effective through June 13, 2003. (12-20)

- 1680 - Department of Transportation - Central Services Division Permit Section - Public necessity rules relative to movements of manufactured homes on Tennessee highways, Chapter 1680-2-2 Overweight and Overdemensional Movement on TN Highways, 10 T.A.R. (October, 2002) - Filed September 30, 2002; effective through March 14, 2003. (09-48)

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pg. 14

RULEMAKING HEARINGS

THE BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS - 0450

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 24th day of April, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0450-1-.04, Qualifications for Licensure, is amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (c) in its entirety, and is further amended by deleting subparagraph (5) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (3) (b) and (5) (c) shall read:

- (3) (b) Meet licensure requirements pursuant to subparagraphs (1) (a) through (1) (d) of this rule.
- (5) (c) Pass the examination pursuant to Rule 0450-1-.08.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, and 63-22-120.

Rule 0450-1-.05, Procedures for Licensure, is amended by deleting subparagraph (1) (m) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting part (5) (a) 2. in its entirety and substituting instead the following language, and is further amended by deleting parts (5) (e) 1. and 2. in their entirety and renumbering the remaining paragraphs accordingly, and is further amended by deleting subparagraph (5) (g) in its entirety and substituting instead the following language, so that as amended, the new part (5) (a) 2. and the new subparagraph (5) (g) shall read:

- (5) (a) 2. Who has successfully passed the examination, as provided in rule 0450-1-.08.
- (5) (g) To replace the temporary license with a regular license, the applicant shall notify the board in writing, using a form provided by the board, and present supporting documentation demonstrating the satisfactory completion of the required Post Master's supervised experience in a clinical setting which meets the requirement of 0450-1-.10 (5). The board shall then grant or deny the regular license application, based on satisfactory completion of all requirements for licensure.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, 63-22-120, and 63-22-121.

Rule 0450-1-.07, Application Review, Approval, Denial, Interviews, is amended by deleting paragraph (6), paragraph (8), and part (9) (a) 2. in their entirety and substituting instead the following language, so that as amended, the new paragraphs (6) and (8), and the new part (9) (a) 2. shall read:

- (6) The board may at its discretion delay a decision on eligibility to take the examination for any applicant for whom the board wishes additional information for the purpose of clarifying information previously submitted. This request is to be in writing and shall be made within sixty (60) days from the date of the official review of the application by the board.
- (8) Whenever requirements for licensure are not completed within six (6) months from the date of the initial review of application and credentials, written notification will be mailed to the applicant and the application file will be closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.
- (9) (a) 2. The applicant fails to take the examination, if applicable, within twelve (12) months after being notified of eligibility.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, and 63-22-120.

Rule 0450-1-.08, Examinations, is amended by deleting the introductory sentence in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), (3), (4), (5), and (6) in their entirety and substituting instead the following language, so that as amended, the new introductory sentence and the new paragraphs (1), (2), (3), (4), (5), and (6) shall read:

0450-1-.08 EXAMINATIONS. Prior to submitting an application to the Board for consideration for licensure, individuals shall pass the examinations required by this rule.

- (1) The Board adopts as its licensure examination for professional counselors the following examinations or their successor examinations given by the National Board for Certified Counselors (NBCC):
 - (a) The National Counselor Examination; and

- (b) The Tennessee jurisprudence examination concerning Tennessee's professional counselor statutes and regulations which is administered by the NBCC; and
 - (c) If applying for licensure as a professional counselor with Mental Health Service Provider designation, the National Clinical Mental Health Counseling Examination.
- (2) Admission to, application for, and fees to sit for the examinations are governed by and must be submitted directly to NBCC.
 - (3) The applicant may receive additional information concerning NBCC examinations and NBCC administered examinations by writing to NBCC, 3 Terrace Way, Suite D, Greensboro, NC 27403-3660.
 - (4) Passing scores on NBCC examinations and NBCC administered examinations are determined by NBCC. Such passing scores as certified by the Board are adopted by the Board as constituting successful completion of the examinations.
 - (5) Certification of passing the examinations must be submitted directly to the Board from NBCC in conjunction with the applicant's filing an application for licensure with this Board. It is the applicant's responsibility to initiate the submission of the exam scores to the Board.
 - (6) If an applicant neglects, fails, or refuses to take an examination or fails to pass the examination for a license under these rules within twelve (12) months after being deemed eligible to sit by the Board, the application will be denied. However, such an applicant may thereafter make a new application accompanied by the required fee. The applicant shall meet any requirements in effect at the time of the new application.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-104, and 63-22-107.

Rule 0450-2-.08, Examinations, is amended by adding the following language as new subparagraph (2) (g) and renumbering the current subparagraph (2) (g) as (2) (h), so that as amended, the new subparagraph (2) (g) shall read:

- (2) (g) An applicant who does not appear for his/her scheduled oral examination shall be deemed to have failed the oral examination unless the oral examiner is notified at least twenty-four (24) hours prior to the scheduled examination time. A subsequent scheduled oral examination shall be considered as a second (2nd) attempt.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, 63-22-107, and 63-22-121.

Rule 0450-3-.08, Examinations, is amended by adding the following language as new subparagraph (2) (g) and renumbering the current subparagraph (2) (g) as (2) (h), so that as amended, the new subparagraph (2) (g) shall read:

- (2) (g) An applicant who does not appear for his/her scheduled oral examination shall be deemed to have failed the oral examination unless the oral examiner is notified at least twenty-four (24) hours prior to the scheduled examination time. A subsequent scheduled oral examination shall be considered as a second (2nd) attempt.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-203, and 63-22-205.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2003. (02-18)

THE TENNESSEE BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 6th day of May, 2003.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 1st Fl., 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 0460-1-.12, Repealed, is amended by deleting the catchline and substituting instead the following new catchline, and is further amended by adding the following new introductory language and paragraphs (1) through (28):

0460-1-.12 UNPROFESSIONAL CONDUCT. Pursuant to T.C.A. § 63-5-124, the Board is authorized to refuse to grant a license or certificate to an applicant or to discipline an individual licensed or certified by the Board if that individual has engaged in unprofessional conduct. Pursuant to its authority under T.C.A. § 63-5-124, the Board declares that unprofessional conduct includes, but is not limited to, the following:

- (1) Exercising undue influence on the patient or client, including the promotion of the sale of services, goods, appliances or drugs in such manner as to exploit the patient or client for the financial gain of the practitioner or of a third party.
- (2) Directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional services.
- (3) Failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client.
- (4) Making false or materially incorrect or inconsistent entries in any patient records or in the records of any health care facility, school, institution or other work place location.
- (5) Failing to report patient care which accurately reflects the evaluation and treatment of each patient.
- (6) Revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law.

- (7) Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
- (8) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them.
- (9) Performing professional services which have not been duly authorized by the patient or client or his or her legal representative.
- (10) Failing to maintain an accurate and legible written treatment history for each patient.
- (11) Failing to identify to a patient, patient's guardian or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request.
- (12) Failing to report suspected child abuse to the proper authorities, as required by T.C.A. § 37-1-403(a)(2).
- (13) Failing to respond within thirty (30) days to written communications from the Department of Health to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of thirty (30) days shall commence on the date when such communication was delivered to the licensee. If the communication is sent from the department by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of thirty (30) days shall commence on the date of delivery to the licensee, as indicated by the return receipt.
- (14) Falsifying, altering or destroying treatment records in contemplation of an investigation by the Board or a lawsuit being filed by a patient.
- (15) Intentionally presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation, or at any hearing of the Board.
- (16) Conspiring with any person to commit an act, or committing an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Department of Health during any investigation involving the Board.
- (17) Violating any lawful order of the Board previously entered in a disciplinary hearing, or failing to comply with a lawfully-issued subpoena of the Board.
- (18) Violating any term of probation or condition or limitation imposed on the licensee by the Board.
- (19) Practicing with an expired, retired, suspended or revoked license, permit, or registration.
- (20) Prescribing controlled substances for a habitual drug user in the absence of substantial dental justification.
- (21) Prescribing drugs for other than legitimate dental purposes.
- (22) Providing prescriptions for any controlled substances listed in Schedules II, III, IV, and V, as provided in

- 21 C.F.R. Chapter 2, 1308.12 through .15, to patients with whom no dentist/patient relationship has been established. For purposes of this provision, a “dentist/patient” relationship exists where a dentist has provided dental treatment to a patient on at least one (1) occasion within the preceding year.
- (23) Using or removing narcotics, drugs, supplies or equipment from any health care facility, school, institution or other work place location without prior authorization.
 - (24) Pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist’s signature or the name of any controlled substances listed in Schedules II, III, IV, and V, as provided in 21C.F.R. Chapter 2, 1308.12 through .15.
 - (25) Failing to exercise reasonable diligence to prevent partners, associates, and employees from engaging in conduct which would violate any provisions of the Tennessee Dental Practice Act or any rule, regulation, or order of the Board.
 - (26) Committing any act of sexual abuse, misconduct or exploitation related to the licensee’s practice of dentistry.
 - (27) Termination of a dentist/patient relationship by a dentist, unless notice of the termination is provided to the patient. For purposes of this provision, a “dentist/patient” relationship exists where a dentist has provided dental treatment to a patient on at least one occasion within the preceding year.
 - (a) “Termination of a dentist/patient relationship by the dentist” means that the dentist is unavailable to provide dental treatment to a patient, under the following circumstances:
 - 1. The office where the patient has received dental care has been closed permanently or for a period in excess of thirty (30) days; or
 - 2. The dentist discontinues treatment of a particular patient for any reason, including non-payment of fees for dental services, although the dentist continues to provide treatment to other patients at the office location.
 - (a) The dentist who is the owner or custodian of the patient’s dental records shall mail notice of the termination of the dentist’s relationship to the patient, which notice shall provide the date that the termination becomes effective, and the date on which the dentist/patient relationship may resume, if applicable.
 - (b) The notice shall be mailed at least fourteen (14) days prior to the date of termination of the dentist/patient relationship, unless the termination results from an unforeseen emergency (such as sudden injury or illness), in which case the notice shall be mailed as soon as practicable under the circumstances.
 - (28) Interfering or attempting to interfere with the professional judgment of an individual who is licensed or certified by the Board. Examples of interfering with the professional judgment of an individual who is licensed or certified by the Board include, but are not limited to, the following:
 - (a) Setting a maximum or other standardized time for the performance of specific dental procedures.

- (b) Establishing professional standards, protocols or practice guidelines which conflict with generally accepted standards within the dental profession.
- (c) Entering into any agreement or arrangement for management services that:
 - 1. interferes with a dentist's exercise of his/her independent professional judgment;
 - 2. encourages improper overtreatment or undertreatment by dentists; or
 - 3. encourages impermissible referrals from unlicensed persons in consideration of a fee.
- (d) Placing limitations or conditions upon communications that are clinical in nature with the dentist's patients.
- (e) Precluding or restricting an individual's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.
- (f) Penalizing a dentist for reporting violations of a law regulating the practice of dentistry.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 37-1-403, 63-5-105, 63-5-108, and 63-5-124.

Rule 460-2-.11, Regulated Areas of Practice, is amended by deleting subparagraph (2) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (b) shall read:

- (2) (b) Dentists may prescribe, dispense or otherwise distribute the controlled substances listed in Schedules II, III, IV, and V, as provided in 21 C.F.R. Chapter 2, 1308.12 through .15, only to individuals with whom they have established a dentist/patient relationship and for whom they have provided dental services. For purposes of this provision, a "dentist/patient" relationship exists where a dentist has provided dental treatment to a patient on at least one (1) occasion within the preceding year.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-122.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of February, 2003. (02-08)

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

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 22nd day of April, 2003.

Written comments will be included in the hearing records if received by the close of business April 22, 2003, 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 (April 22, 2003) or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Mr. Martin Smith at 615-532-0569. For complete copies of the text of the notice, please contact Mr. Martin Smith, Department of Environment and Conservation, 9th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243, telephone 615-532-0569.

SUBSTANCE OF PROPOSED RULE

**CHAPTER 1200-3-27
NITROGEN OXIDES**

NEW RULE

TABLE OF CONTENTS

1200-3-27-.07 Voluntary NOx Emissions Reduction Program

1200-3-27-.07 VOLUNTARY NOX EMISSIONS REDUCTION PROGRAM

- (1) The purpose of this rule is to provide a method by which sources that emit NOx but are not subject to the requirements of Rule .06 of this chapter can voluntarily make emission reductions and thereby earn marketable NOx allowances for use in the EPA's NOx Budget Trading Program.
- (2) Terms used in this rule shall have the meanings given in Rule .06 of this chapter, Rule .02 of this chapter, and other rules of Division 1200-3, in this order of precedence.
- (3) Any owner or operator of a stationary source may submit a NOx emission reduction proposal, as described in Paragraph (6) below, for reducing NOx emissions during control periods, if each emission unit

from which NOx reductions at the source will be obtained meets the following criteria at the time a NOx emission reduction proposal is submitted and during each control period thereafter for which creditable emission reductions are claimed:

- (a) Discharges NOx emissions through a stack;
 - (b) Is fossil fuel-fired;
 - (c) Has a major source operating permit issued under Chapter 1200-3-9-.02 or a comparable local program rule;
 - (d) Is not subject to the requirements of Rule .06 of this chapter, including opt-in units;
 - (e) Is in compliance with all NOx emission requirements applicable to the source and unit at the time of the submittal of the proposal so that any NOx reductions made pursuant to this rule are surplus to those requirements;
 - (f) Installed or implemented a NOx emission control strategy after July 1, 2002;
 - (g) Conducted an emission baseline determination using the protocol described in Part (6)(a)4 below prior to initiating the NOx emission control strategy; and
 - (h) Makes emission reductions that are not the result of shutting down.
- (4) Any owner or operator of an eligible unit may participate by:
- (a) Submitting a NOx emission reduction proposal in accordance with Paragraph (6) below;
 - (b) Making NOx emission reductions during a control period that are federally enforceable, quantifiable, and surplus to regulatory requirements; and
 - (c) Submitting a quantification report, in accordance with Paragraph (7) below, after any control period for which creditable reductions are claimed.
- (5) Emission reductions made at a participating unit shall be quantified using an emission reduction quantification protocol approved by the technical secretary and the EPA. The emissions measurements recorded and reported in accordance with this protocol shall be used to determine the emission reductions made by the source under this rule and eligible to be issued as allowances for use in the EPA's NOx Budget Trading Program. Each participating unit shall comply with the applicable monitoring requirements prescribed by the approved protocol.
- (6) Each NOx emission reduction proposal shall contain the elements and be processed as follows:
- (a) Each NOx emission reduction proposal shall include the following:
 - 1. Information identifying each emission reduction unit from which NOx emission reductions have been or will be achieved, including the name, location, operating permit number, and identification number of the source and unit;
 - 2. Description of the NOx controls present on the unit prior to making emission reductions;

3. Explanation of the methods used to achieve the NOx emission reductions;
 4. Identification of the emission reduction quantification protocol, approved by the technical secretary and the EPA, that will be used to calculate the proposed emission reductions; and
 5. Emissions baseline determination for each unit made in accordance with the approved protocol described in Paragraph (5) above.
- (b) The technical secretary shall notify in writing the owner or operator submitting a NOx emission reduction proposal of his decision with respect to the proposal. If the technical secretary disapproves a proposal, this written notice shall include a statement of the specific reasons for the disapproval of the proposal. Following such a disapproval the owner or operator may submit an amended or a different NOx emissions reduction proposal for the unit.
- (7) Each NOx emission reduction quantification report shall be submitted and processed as follows:
- (a) By October 15 following the control period during which the emission reductions were made, the owner or operator of the participating unit must submit a quantification report to the technical secretary stating the reductions achieved during the control period.
 - (b) The quantification report shall include the following:
 1. The amount in tons of NOx emission reductions made during the control season, calculated based on the quantification protocol and including supporting calculations and documentation, such as fuel use information;
 2. Certification by the owner or operator that the NOx reductions achieved during the control period were calculated based on the approved protocol; and
 3. A written statement signed by a responsible official certifying the following:

Based on information and belief formed after reasonable inquiry, I believe the statements and information in this document are true, accurate and complete.
 - (c) The technical secretary shall either approve the emission reductions as being in accordance with the quantification protocol or disapprove them. If they are approved, the technical secretary shall notify the EPA of such approval in accordance with Paragraph (8) below. If they are disapproved, the technical secretary shall notify the source in writing and shall state the specific reasons for the disapproval. The source may rectify the deficiencies in its quantification report and submit an amended report.
- (8) Upon approval of a quantification report, the technical secretary shall notify the EPA of the number of allowances to be transferred from the state's general account into an account of the source or its designee for use in the federal NOx Budget Trading Program. The total number of allowances to be transferred shall be ninety percent (90%) of the creditable NOx emission reductions achieved by the unit. The remaining ten percent (10%) shall be retired by the state. The Administrator shall record the transfer.
- (9) Each NOx allowance issued for NOx emission reductions meeting the requirements of this rule is an authorization to emit one ton of NOx in accordance with the federal NOx Budget Trading Program.

- (10) Within 90 days after the NOx allowance transfer deadline for the NOx Budget Trading Program, the technical secretary shall provide the Administrator a report reconciling the allowances transferred for the purpose of this rule, including:
 - (a) The number of allowances deposited into the state's general account for the control period immediately preceding such deadline;
 - (b) The number of allowances earned by sources pursuant to this rule; and
 - (c) The number of unused allowances, which shall be retired.
- (11) The owner or operator of a source submitting a quantification report that contains an error that affects an allocation must notify the technical secretary in writing within 30 days of the error.
- (12) If the owner or operator of a unit has submitted a quantification report that incorrectly overstated the amount of emission reductions achieved and, as a result of this report, allowances in excess of those that should have been transferred from the state's general account were transferred into another account for use in the federal NOx Budget Trading Program, the owner or operator shall place into the state's general account an amount of allowances equal to three times the amount of the overstatement within 30 days of discovery of the overstatement by the owner or operator.
- (13) The owner or operator of a source, or its designee, shall maintain all records used to calculate the emission reductions in accordance with the quantification protocol. Each record shall be maintained for five (5) years following the date the record is created and shall be made available for inspection by the technical secretary or his representative immediately upon request.
- (14) After the third control period this program has been in effect, and every three years thereafter, the technical secretary shall evaluate the program and submit a report to the board, summarizing the results of the evaluation.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2003. (02-17)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF SOLID WASTE MANAGEMENT**

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules on behalf of the Tennessee Solid Waste Disposal Control Board pursuant to T.C.A. §§ 68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

Location	Time	Date
5 th Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN	1:00 p.m. CDT	April 17, 2003

Individuals with disabilities who wish to participate in these proceedings (or review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the scheduled hearing date or date such party intends to review such filings, to allow time to provide such aid or services. Contact the ADA Coordinator at 401 Church Street, 7th Floor L & C Tower, Nashville, TN 37243, 1-888-867-2757. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this notice of rulemaking hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division's Central Office by 4:30 p.m. CDT, April 25, 2003 in order to assure consideration. The "DRAFT" rules may also be accessed for review at the Department's World Wide Web Site located at "<http://www.state.tn.us/environment/new.htm>".

The Division of Solid Waste Management has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

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

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

Knoxville Environmental Assistance Center
State Plaza, Suite 220
2700 Middlebrook Pike
Knoxville, TN 37921-5602
865-594-6035/1-888-891-8332

Nashville Environmental Assistance Center
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
615-687-7000/1-888-891-8332

Johnson City Environmental Assistance Center
 2305 Silverdale Road
 Johnson City, TN 37601-2162
 423-854-5400/1-888-891-8332

Jackson Environmental Assistance Center
 362 Carriage House Drive
 Jackson, TN 38305-2222
 731-512-1300/1-888-891-8332

Cookeville Environmental Assistance Center
 1221 South Willow Avenue
 Cookeville, TN 38501
 931-432-4015/1-888-891-8332

Columbia Environmental Assistance Center
 2484 Park Plus Drive
 Columbia, TN 38401
 931-380-3371/1-888-891-8332

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

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

Clarksville-Montgomery Cty. Public Library
 350 Pageant Lane, Suite 501
 Clarksville, TN 37040-0005
 931-648-8826

Hardin County Library
 1100 Pickwick Road
 Savannah, TN 38372
 731-925-4314

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

McIver's Grant Public Library
 204 North Mill Street
 Dyersburg, TN 38024-4631
 901-285-5032

Kingsport Public Library
 400 Broad Street
 Kingsport, TN 37660-4292
 423-229-9488

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

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

SUBSTANCE OF PROPOSED RULES

Paragraph (2) of rule 1200-1-7-.01 Solid Waste Management System: General is amended by deleting the definition of "land application" and substituting the following definition:

"Land application" means a facility where solid wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes.

Authority: *T.C.A. §§68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d)(1), and 68-211-111(d)(2).*

Part 1 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new subpart (vi) to read as follows:

(vi) A land application facility, if:

- (I) The operator complies with the notification requirements of Part 2 of this subparagraph;
- (II) The operator attaches to his notification all attachments required at rule 1200-1-7-.13 (2);
- (III) The facility is designed and operated in compliance with rule 1200-1-7-.13.

Authority: T.C.A. §§68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d)(1), and 68-211-111(d)(2).

Subparagraph (b) of paragraph (2) of rule 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by adding a new part 7 to read as follows:

- 7. Land Application Facility (Acres)
 - (i) Less than 100 \$ 1,000.00
 - (ii) 100 or Greater \$ 2,000.00

Subparagraph (c) of paragraph (3) of rule 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by adding a new part 4 to read as follows:

- 4. Land Application Facility (Tons(wet wt)/Year)
 - (i) Less than 10,000 \$1,000
 - (ii) 10,000 or Greater \$ 5,000

Authority: T.C.A. §§68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d)(1), and 68-211-111(d)(2).

NEW RULES

TABLE OF CONTENTS

1200-1-7-.13 Requirements For Land Application Facilities

1200-1-7-.13 REQUIREMENTS FOR LAND APPLICATION FACILITIES

- (1) General
 - (a) Purpose – The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to design, construct and operate a land application facility in Tennessee.
 - (b) Scope/Applicability

1. The requirements of this rule apply to land application facilities in Tennessee. Except as specifically provided elsewhere in these rules, no facility may land apply solid waste without a permit as provided in rule 1200-1-7-.02(1)(b)1.
 2. The land application of landscaping and landclearing wastes and farming wastes are exempt from the permit requirements of this rule.
 3. The land application of solid wastes from food processing facilities are subject to the requirements to have a permit-by-rule.
 4. Land application of all other solid wastes will be subject to rule 1200-1-7-.02(1)(b)3(xxii).
- (c) Notification Requirements – The operator must comply with the notification requirements of rule 1200-1-7-.02(1)(c)1(vi). The operator must make attachments to the notification as follows:
1. The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with rule 1200-1-7-.13 paragraph (2)(a) through 1200-1-7-.13 paragraph 2(g) – inclusive.
 2. The operator attaches any sampling, monitoring, or other plans required by these rules or by the Commissioner.
 3. The operator of an existing permit-by-rule land application facility must modify the notification if:
 - (i) Adding a waste stream from a new generator, or a waste stream from an existing generator which has not been previously approved for land application at that site; or
 - (ii) Adding new acreage to the land application operations.
- (2) Unless specifically noted otherwise, the standards of this paragraph shall apply to all land applications subject to a permit-by-rule as provided at rule 1200-1-7-.13(1).
- (a) Performance Standards
1. The facility must be constructed, operated, maintained, and closed in such a manner as to minimize:
 - (i) The propagation, harborage, or attraction of flies, rodents, or other disease vectors;
 - (ii) The potential for releases of solid wastes or solid waste constituents to the environment except in a manner authorized by state and local air pollution control, water pollution control and/or waste management agencies;
 - (iii) The potential for harm to the public through unauthorized or uncontrolled access;
- (b) Design Standards – In addition to satisfaction of the performance criteria detailed in paragraph (2)(a) of this rule, land application facilities must be designed, constructed in compliance with Tennessee rule 1200-1-7-.13, et sequiter.

1. The facility must designate and describe in the attachments to the permit-by-rule notification any on-site storage of solid wastes at the land application facility. Any storage must be restricted to containers, bins, lined pits or on paved surfaces, designed for such storage, or other storage provisions approved by the Commissioner. Any lagoons/surface impoundments must be of an engineered design. Such design must include a synthetic liner and groundwater monitoring system capable of detecting leakage from the storage unit. Additionally, detailed engineering drawings and a design/operational narrative must be provided to the Division as an attachment with the permit-by-rule notification for review and approval.
 2. The facility must not be located in a floodplain unless it is demonstrated to the satisfaction of the Commissioner that the land application area is operated and maintained to prevent wash-out of any solid waste.
 3. Land application facilities shall not be located in wetlands.
 4. If a facility is proposed in an area of highly developed karst terrain, the applicant must demonstrate to the satisfaction of the Commissioner that the facility will not cause any significant degradation to the local groundwater resources.
 5. The facility must be located such that the waste application boundaries are greater than:
 - (i) 500 feet from a dwelling;
 - (ii) 500 feet from any domestic water supply well;
 - (iii) 100 feet from a stream;
 - (iv) 1000 feet from a public water supply well; and
 - (v) 20 feet from a public roadway.
 6. There must be a vegetative buffer zone between the land application facility and any wet weather conveyance.
 7. Analytical data for each of the waste streams proposed for land application must be submitted to the Division. The analytical data must completely characterize the wastes proposed for land application.
- (c) Operational Standards – In addition to satisfaction of the performance and design criteria detailed in paragraph (2)(a) and (2)(b) of this rule, land application facilities must be operated in compliance with Tennessee rule 1200-1-7-.13, et sequiter.
1. Facilities at which wastes are to be land applied for agronomic benefits, must demonstrate that the rate at which waste is to be land applied will benefit crop production without exceeding crop nutrient needs or hydraulically overloading the receiving soils.
 2. For wastes which are to be land applied for soil amendment benefits, the facility must demonstrate the amendment value of land application by soil and waste analysis, and that application rates must not exceed the soil amendment needs of, or hydraulically overload the receiving soils.

3. The land application of waste must not result in an accumulation of harmful levels of waste constituents in crops or in the environment. It must be demonstrated that the rate at which waste is to be land applied will not result in an accumulation of harmful levels of waste constituents or waste degradation by-products in the receiving soils, produced crops, or in the environment.
 4. The soils analytical data, the waste constituent analytical data and waste application rate calculations must be included as an attachment to the permit-by-rule notification.
 5. Land application methods must be appropriate for the waste being land applied. Wastes which have a potential for attraction of vectors, or for the generation of objectionable odors must be immediately incorporated into the soil matrix, either through direct injection or tilling.
 6. Except as provided at subparagraph (b)1 of this paragraph, there must be no storage of solid wastes at the facility.
 7. Wind dispersal of solid wastes at or from the facility must be adequately controlled.
 8. The facility must be operated in a manner such that the rate at which waste is to be land applied would be at a rate beneficial to crop production.
 9. The facility must submit a sampling plan for the periodic monitoring for waste materials, waste constituents in soil, and in surface waters. In this plan, the facility must propose a sampling frequency, proposed parameters and indicate the report format in which it will be submitted.
 10. Ground water monitoring may be required by the Commissioner. If groundwater monitoring is required by the Commissioner, a groundwater monitoring plan must be submitted for approval.
- (d) Recordkeeping Requirements – The operator must maintain, for the operational life of the facility, the following records:
1. A record of all generators and quantities of solid wastes land applied. The total quantity land applied per year, for each waste stream at each site; and
 2. The number of acres to which each waste stream was applied.
- (e) Reporting Requirements
1. Annual Reporting – On or before March 1 of each year, the operator must submit to the Division an annual report. This annual report must contain, at a minimum, the following information:
 - (i) The full name and permanent mailing address of the permittee.
 - (ii) The street address(es) for all locations at which the permittee has land applied solid wastes during the previous calendar year.
 - (iii) A list of all sources of solid wastes land applied by the permittee during the previous calendar year.

- (iv) For each solid waste stream land applied during the preceding year, the total quantity applied, and the number of acres to which the waste was applied.
 - (v) Copies of any analytical data generated during the preceding year for any solid waste materials that the permittee has land applied.
 - (vi) Copies of any analytical data generated during the preceding year from surface waters, groundwater monitoring or soil samples at each site where solid waste materials have been land applied.
- (f) Financial Assurance – Financial assurance is intended to ensure that adequate financial resources are available to the Commissioner for the proper operation and closure of the facility. The types of financial assurance instruments that are acceptable are those specified in 1200-1-7-.03(3)(d). Such financial assurance shall meet the criteria set forth in T.C.A. §68-211-116(a). Financial assurance must be provided for land application facilities having a waste storage capacity in excess of 100,000 gallons for liquids and/or sludges, or 1000 cubic yards for solids. The applicant shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee.
- (g) Duty to Comply – The permittee must comply with all requirements of the permit-by-rule, unless otherwise authorized in writing by this Department. Any permit-by-rule condition non-compliance, except as otherwise authorized by the Department, constitutes a violation of the Act and is grounds for enforcement action, or for termination of the permit-by-rule, revocation and reissuance, or modification.

Authority: T.C.A. §§68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d)(1), and 68-211-111(d)(2).

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of February, 2003. (02-14)

**THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF WATER SUPPLY
WELL CONSTRUCTION RULES**

There will be a hearing before the Department of Environment and Conservation to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, Section 69-11-101 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 on the dates and at the times and locations listed below:

Conference Room A, Jackson Environmental Assistance Center, 362 Carriage Drive, Jackson TN 38305
Tuesday, April 22, 2003 at 1:00pm.

Main Auditorium at the Fleming Environmental Training Center, 2022 Blanton Drive, Murfreesboro TN
Thursday, April 24, 2003 at 10:00am.

West Conference Room, Knoxville Assistance Center, 2700 Middlebrook Pike, Suite 220, Knoxville, TN 37921, Tuesday, April 29, 2003 at 1:00pm.

Any individual with disabilities who wishes to participate in these proceedings (to review the filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids needed to facilitate such participation. Such initial contact shall be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Division of Water Supply 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 Department of Environment and Conservation, 401 Church Street, 12th Floor L&C Tower, Nashville, Tennessee, 37243 or 615/532-00207 or John.Rae.White@state.tn.us.

For a copy of this notice of rulemaking hearing, contact: Division of Water Supply, 401 Church Street, 6th Floor – L&C Tower, Nashville, Tennessee 37243-1549 and 615/532-0191. A complete text of the proposed Rules may also be found by visiting the Department of Environment and Conservation Web site at <http://www.state.tn.us/environment/dws>.

Written comments will be considered if received by the Division of Water Supply, 401 Church Street, 6th Floor-L&C Tower, Nashville, Tennessee, 37243-1549 by the close of business May 6, 2003.

SUBSTANCE OF PROPOSED RULES

NEW RULES

1200-4-9-.17 GEOTHERMAL WELL CONSTRUCTION STANDARDS

(1) Location of Geothermal Wells

- (a) The construction of a geothermal well is prohibited at other than a safe distance from any potential source of contamination. The minimum safe distances shall apply for the sources listed below:

Source of structure	Minimum Distances
Sewer Lines	50 feet
Septic Tanks	50 feet
Springs	100 feet
Septic Drain Fields	50 feet
Water Wells	100 feet
House to septic tank connection	10 feet
House to sewer line connection	10 feet

(2) Source of Drilling Water for Geothermal Well Construction

- (a) All water used in drilling and construction of a geothermal well shall be from a public water supply, water well or protected spring box.
- (b) All water used in the drilling or construction process shall be treated with enough chlorine product to retain a free chlorine residual of at least two (2ppm) parts per million.
- (c) Drilling fluids and additives shall be materials specified by the manufacture for use in either water or geothermal well drilling or construction and approved by the Department.

- (d) During the course of drilling a geothermal well with air rotary equipment, a minimum of one gallon per minute of water must be injected or added into the air stream unless the drill rig is equipped and using a dust cyclone to control dust. The amount of water injected shall be sufficient to control dust and to keep the hole cleaned out.
 - (e) Petroleum based products or byproducts spilled or leaked from a drill rig in any quantity greater than one (1 qt.) quart shall be immediately removed from the area within a twenty-five foot radius around the well by the driller.
- (3) Geothermal Well Grouting
- (a) If the geothermal well bore is to be permanently cased, the diameter of the drilled hole shall be large enough to allow for a minimum of 1.5 inches of annular space on all sides of the casing for forced injection of grout through a tremie pipe. Bentonite or cement grout shall fill the entire annular space both inside and outside the well casing. The remaining borehole shall also be filled with neat cement, bentonite cement mixture or 20% or greater high solids bentonite grout. Geothermal well casing may be terminated below land surface to allow for subsurface connections. A vapor barrier from land surface to five (5ft.) feet below land surface comprised of native soil material may be used in geothermal well installations.
 - (b) If the geothermal well is not cased, the entire borehole surrounding the closed loop shall be filled with neat cement, bentonite cement mixture or 20% or greater high solids bentonite grout. A vapor barrier from land surface to five (5ft.) feet below land surface comprised of native soil material may be used in uncased geothermal wells.
 - (c) Grout is to be composed of neat cement, a bentonite cement mixture, or high solids sodium bentonite grout.
 - 1. Neat cement grout shall be composed of Class A, Type I Portland Cement mixed with not more than six (6) gallons of clean water per bag (one cubic foot or 94 pounds) of cement with a density of 15 to 16 pounds per gallon, or to manufacturer's specifications.
 - 2. Bentonite-cement grout shall be composed of powdered bentonite (less than 5% by weight) mixed at not more than 8 gallons of water to the bag, with a density of 14 to 15 pounds per gallon, or to manufacturer's specifications.
 - 3. High solids sodium bentonite grout shall have minimum of 20 % solids and be mixed per manufacturer's specifications with water and/or other required additives.
 - (d) All grouting shall be accomplished using forced injection to emplace the grout. When emplacing the grouting material, the tremie pipe shall be lowered to the bottom of the zone to be grouted. The tremie pipe shall be kept full continuously from start to finish of the grouting procedure, with the discharge end of the tremie pipe being continuously submerged in the grout until the zone to be grouted is completely filled.
 - (e) Geothermal system wells shall be grouted in-place within five (5) days after borehole completion.
 - (f) When high solids sodium bentonite grouts are used, a vapor barrier at the land surface at least the width of the annular space made of suitable materials, as approved by the Department, such as native soils, gravel, sand or thermoplastic material, is required for public safety and structural stability of the well.

- (g) Wells that encounter caves or large fractures below thirty feet from land surface that prohibit the use of standard grouting procedures shall use one of the following materials to seal these intervals up to a maximum of thirty feet in each well;
 - 1. chipped or granular bentonite;
 - 2. clean washed gravel ½ inch diameter or less;
 - 3. clean washed coarse sand; or
 - 4. liner casing with packers attached to both the top and bottom of the liner casing.
- (4) Reporting of Geothermal wells
 - (a) A geothermal well completion report shall be submitted to the Department on a form provided or approved by the Department within sixty days after completion of the drilling, closure, construction or reconstruction of each geothermal well.
 - (b) The report shall be true and accurate. The report shall include as a minimum the following accurate information about the well. Footage shall be accurate to the nearest foot of measurement:
 - 1. Name and address of the person for whom the well was drilled;
 - 2. The location of the well as denoted by county, street address and road name;
 - 3. The location of the well as denoted by driller map number coordinate or latitude and longitude of the well, and diagram of the geothermal borehole showing each location and identification of other wells on the property and location of septic tanks, field lines or sewers and proposed use of the well;
 - 4. The date completed for each well;The “log” of the well;
 - 5. The depth, diameter and general specifications for the well as denoted on the form including information on backfill and heat transfer pipe (dropline pipe) used in the well bore, licensed driller’s name and contractor identification number;
 - 6. Geothermal well borings and underground lines associated with heat transfer to geothermal units are required to have detectable underground tape placed above the well or heat transfer lines within eighteen inches of land surface to denote the subsurface location of the installations;
 - 7. The driller is required to provide a master plat to both the owner and Division of Water Supply showing the location of all geothermal well sites. The plat shall include related distances from major buildings, septic tanks and field lines and sewer lines and be submitted within sixty days upon completion of drilling all wells on a given project.
- (5) Heat Pump Loop Material. In a closed-loop heat pump well, the material used to make up the heat-exchange loop that is placed in the ground or into a body of water must be composed of high density polyethylene. All heat pump loop material placed in the borehole must be installed and grouted without delay upon completion of drilling of each well. Each loop will be pressure tested to 100 psi and maintain

constant pressure for twenty minutes before placement of loop into service. The entire system shall be free of leaks or pressure loss. A pump installer license is required to install closed loop droplines in a geothermal well.

- (a) High Density Polyethylene Pipe. This pipe must be manufactured in accordance with dimensional specifications of ASTM D-2513 or ASTM F-714 and must have a minimum cell classification of PE345434C or HPE355434C when tested under ASTM D-3350 to be acceptable for use in closed-loop heat pump systems.
- (6) Connecting Closed-Loop Pipe. Pipe must be thermally fused according to the pipe manufacturer's specifications and must not leak after assembly.
 - (7) Heat Transfer Fluid. The fluid used inside the closed-loop assembly must be approved by the board and meet the following standards:
 - (a) Heat transfer fluids must be composed of;
 1. Pure glycerine solution-glycerin must be ninety- six and one-half (96.5%) United States pharmacopoeia grade;
 2. Food grade propylene glycol;
 3. Dipotassium phosphate;
 4. Sodium chloride;
 5. Potassium acetate;
 6. Methanol;
 7. Water;
 8. Ethanol; or
 9. Other fluids as may be approved in advance by the division;
 - (b) The fluid as it is used in a diluted state in the closed-loop must have the following properties:
 1. Be ninety percent (90%) biodegradable;
 2. Demonstrate low corrosion to all materials common to ground source heat pump systems;
 3. Be homogeneous,. Uniform in color, free from lumps, skins and foreign material that would be detrimental to fluid usage;
 4. Not have a flash point lower than ninety degrees Celsius (90°C);
 5. Not have a five (5)-day biological oxygen demand (BOD) at ten degrees Celsius (10°C) that exceeds two-tenths (0.2) gram oxygen per gram nor be less than on-tenth (0.1) gram oxygen per gram;

6. Not have a toxicity that is less than lethal dose (LD) fifty (50) oral-rats of five (5) grams per kilogram; and
 7. Show neither separation from exposure to heat or cold, nor show an increase in turbidity.
- (c) While this rule attempts to define antifreeze fluids that will protect the environment, it is the responsibility of the installer to become familiar with safe and proper use of these fluids and to take necessary precautions to ensure ground water protection.
- (8) Wells with closed heat pump loop dropline material in the well bore shall have all heat transfer fluid removed from the closed loop before well closure. This fluid shall be disposed in accordance with manufacturers specifications. The dropline material shall either be completely removed from the geothermal borehole before closure and the well closed in accordance with Rule 1200-4-9-.16 (2) or the loop shall be pumped full of cement grout or bentonite. The driller shall denote on the geothermal well closure report how much grout or bentonite was used in sealing the dropline. The upper portion of the borehole to five feet below land surface may be filled with compacted earth or same material to fill the dropline material.
 - (9) Wells constructed to receive water returned from commercial or domestic heat pump applications must be constructed to water well construction standards and be drilled by licensed water well drillers. The depth of the water return well must not exceed the depth of the water supply well. A sanitary seal or a pitless adapter may be used and the water return pipe must extend at least twenty feet below the static water level inside the well. The water discharged back into the well must not degrade the waters of the state.

1200-4-9-.18 MONITOR WELL CONSTRUCTION STANDARDS

- (1) Construction standards for monitor wells are not promulgated under this statute. Construction standards for monitor wells are regulated by the state agency requiring the monitor well to be placed into service. The Well Act only requires an individual to be licensed as a monitor well driller.
- (2) Monitor well reports and Notice of Intent fees for monitor wells are not required to be submitted to the Division of Water Supply.
- (3) Installer licenses are not required to install pumps or water treatment devices on monitor wells.
- (4) Monitor wells are required to be constructed by licensed monitor well drillers.
- (5) Monitor wells may be closed by a licensed water well driller, geothermal driller or monitor well driller. Well closure standards for monitor wells are regulated by the agency requiring the monitor well to be placed into service and not the Division of Water Supply.

AMENDMENTS

Rule 1200-4-9-.01 Definitions of Terms is amended by deleting the rule in its entirety and adding the following language, so that as amended the rule shall read:

- (1) “Animal pen” means an enclosed area one-half (1/2) acre or less where ten or more animals congregate for feeding and watering where vegetation or ground cover has been destroyed or is missing and the area is covered with manure or mud.

- (2) "Aquifer" means a geologic formation, a group of such formations, or a part of a formation that will yield usable quantities of water to wells.
- (3) "Artesian" means ground water confined under sufficient hydrostatic pressure to rise above the aquifer containing it.
- (4) "Beneficial Use" means application of a resource to a purpose that produces economic or other benefits, tangible or intangible, economic or otherwise, such as procurement of water for domestic, industrial, or agricultural use or for a municipal water supply.
- (5) "Bentonite" means a clay derived from volcanic ash consisting of at least 85% sodium montmorillonite. Bentonite is available in the following forms:
 - (a) "Bentonite granules" means 8 mesh pure bentonite, without additives.
 - (b) "Bentonite pellets" means commercially manufactured tablets made by compressing pure bentonite, without additives, into forms greater than 1/4 inch in size.
 - (c) "Bentonite chips" means commercially processed angular fragments of pure bentonite without additives.
- (6) "Board" means Board of Ground Water Management
- (7) "Borehole" means the cylindrical opening created by the action of a drill or auger as it penetrates the subsurface.
- (8) "Casing" means pipe or tubing, constructed of specified materials and having specified dimensions and weights, that is installed in a borehole during or after completion of the borehole to support the side of the hole and thereby prevent caving, to allow completion of the well, to prevent formation material from entering the well, and to prevent entry of undesirable water into the well.
- (9) "Certificate" means a written or printed statement or decal issued by the Department to the licensee which assigns a license number and license type to the license holder.
- (10) "Commissioner" means the Commissioner of Environment and Conservation, the Commissioner's duly authorized representative and, in the event of his absence or a vacancy in the office of Commissioner, the Deputy Commissioner of Environment and Conservation
- (11) "Completion date of well" means the date that drilling equipment leaves or is removed from the well site.
- (12) "Completion of drilling" means the date that drilling equipment leaves or is removed from the well site.
- (13) "Consolidated rock" means rock that is firm and coherent, solidified or cemented, such as granite, gneiss, limestone, slate or sandstone, which has not been decomposed by weathering.
- (14) "Contamination" means the act of introducing into water foreign materials of such nature, quality, and quantity as to cause degradation of the quality of the water.
- (15) "Department" means the Department of Environment and Conservation.

- (16) “Director” means the Director of the Tennessee Division of Water Supply.
- (17) “Domestic use” means the use of water for drinking, bathing, or culinary purposes.
- (18) “Drill” means to dig, drill, re-drill, construct, deepen or alter a well.
- (19) “Driller” means any person who manages or supervises the digging, drilling, or re-drilling of a well.
- (20) “Employee” means a person hired by the license holder under this Act to work for wages or salary where the license holder has submitted for such person, a notarized affidavit of supervision.
- (21) “Geothermal well” means a hole drilled into the earth, by boring or otherwise, greater than twenty feet in depth constructed for the primary purpose of adding or removing British Thermal Units (BTU) from the earth for heating or cooling.
- (22) “Grout” means a stable, impervious, minimum shrinkage bonding material that is capable of producing a watertight seal required to protect against the intrusion of contamination.
- (23) “Inactive well” means any well not in use and does not have functioning equipment, including bailers, associated either in or attached to the well.
- (24) “Installation of pumps” means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, which may include construction involved in making entrances to the well and establishing seals and installation of droplines in wells.
- (25) “Installer” means any person who installs or repairs well pumps or who installs filters or water treatment devices.
- (26) “Liner casing” means pipe that is installed inside a completed and cased well for the purpose of sealing off undesirable water or for repairing ruptured or punctured casing or screens.
- (27) “Log” means a record of the consolidated or unconsolidated formation penetrated in the drilling of a well, and includes general information concerning construction of a well.
- (28) “Monitoring well” means a hole drilled into the earth, by boring or otherwise, constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ground water and or for the recovery of ground water for treatment.
- (29) “Overburden” means unconsolidated earth material that overlies consolidated rock material.
- (30) “Person” means any individual, organization, group, association, partnership, corporation, limited liability company, utility district, state or local government agency or any combination of them.
- (31) “Pit” means a cavity or hole in the ground, the bottom of which is below the level of the surrounding turf.
- (32) “Pitless Adapter” or “pitless unit” means a device specifically manufactured for the purpose of allowing a below-ground lateral connection between a well and its plumbing appurtenances.
- (33) “Potable water” means water that is not brackish or saline and does not contain total coliform bacteria or chemical constituents in such quantity or type as to render the water unsafe, harmful or generally unsuitable for human consumption.

- (34) Production of water means withdrawing water from the ground for purposes of locating, testing or developing a ground water supply from any aquifer for beneficial use.
- (a) Wells for the production of water include, but are not limited to, the following:
1. Borings that are used to locate, divert, withdraw, develop or manage ground water supplies for beneficial uses;
 2. Test holes drilled to determine the availability of water supplies for beneficial uses; and
 3. Wells drilled to supply water for ground water open loop heat pumps and air conditioners.
- (b) The following are not wells for the “production of water” as used in these rules.
1. Post holes;
 2. An excavation for the purpose of obtaining or prospecting for oil, natural gas, minerals other than water, products of mining and quarrying;
 3. Injection wells regulated under Chapter 1200-4-6 of the rules of the Water Quality Control Board;
 4. Cathodic protection wells;
 5. Wells used for dewatering purposes in construction work;
 6. Monitor wells, geographical test borings and piezometers that are regulated by rules of the Water Quality Control Board or otherwise by the Department;
 7. Ponds, pits, sumps and drainage trenches; and
 8. Contaminant recovery wells otherwise regulated by the Department.
- (35) “Pumps and pumping equipment” means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water, including well seals.
- (36) “Recovery well” means any well constructed for the purpose of removing contaminated groundwater or other liquids from the subsurface.
- (37) “Repair” means work involved in deepening, reaming, sealing, installing, or changing casing depths, perforating, screening, or cleaning, acidizing, or redevelopment of a well excavation, or any other work which results in breaking or opening a well seal.
- (38) “Standard Dimension Ratio (SDR)” means the quotient obtained when the outside diameter of thermo-plastic well casing is divided by the wall thickness.
- (39) “Static water level” means the level at which the water stands in the well when the well is not being pumped and is expressed as the distance from a fixed reference point to the water level in the well.
- (40) “Supervision” means the act of directing and managing full or part time unlicensed employees engaged in the business of constructing wells, or installing pumps or installing water treatment devices on wells.

- (41) “Water Treatment Equipment” means any equipment, devices or filters utilized in altering the characteristics or quality of ground water for its intended use.
- (42) “Water Well” means a hole drilled into the earth, by boring or otherwise, for the production of water.”
- (43) Well means one of the three types of holes in the earth: geothermal well, a monitoring well, or a water well.
- (44) “Well closure” means the act of backfilling and sealing a well either active or abandoned in accordance with well closure standards.
- (45) “Well construction” means all acts necessary to construct a well for the production of water including, but not limited to the location and excavation of the well; placement of casings, screens and fittings; development and testing.
- (46) “Well development” means the procedures used to remove mud or fine material from the drilled borehole, to correct any damage to the aquifer that occurred during drilling and improve the water passageways into the well from the aquifer.
- (47) “Well driller” means an individual, firm or corporation engaged in the business of constructing wells.
- (48) “Wellhead” means the upper terminal of the well including adapters, ports, valves, seals, and other attachments.
- (49) “Well owner” means the person who owns the real property on which a well exists or is to be drilled provided however, in the case of any monitoring well or remediation required by the Department or the Commissioner, the well owner shall be the person responsible for such monitoring or remediation.
- (50) “Well seal” means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.

Rule 1200-4-9-.04 Applications is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

- (1) All applications for licensing shall be submitted to the Director on the form prescribed by the Board and provided by the office of the Director.
- (2) An application will not be accepted for processing unless the application is complete, accompanied by the fee required by the Act, and signed by the applicant.
- (3) No fee received with an application will be returned. This includes the fee received from an applicant who fails to pass an examination or meet the requirements of Rule 1200-4-9-.02 (1),(2) and (3).
- (4) The individual who signs the application must meet the requirements of Rule 1200-4-9-.02 and 1200-4-9-.05 (1).
- (5) Applicants who do not meet the requirements of Rule 1200-4-9-.02(1), (2) and (3) will be notified that their application has been denied and the reasons therefor.

- (6) Any person whose application has been denied may request in writing to the Board within thirty (30) days of receipt of the letter of denial, an informal meeting with the Board for the purpose of explaining, or supplementing the application. Based on the person's explanation, the Board may accept the application for processing.
- (7) An applicant whose application has been denied may not file a new application for a period of thirty (30) days following the date of the letter of denial. A new application must be resubmitted with the required application fee.

Rule 1200-4-9-.05 Examinations is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

- (1) All applicants who meet the requirements of rule 1200-4-9-.02(1), (2) and (3) will be required to take a written examination and thereafter appear before the Board for an interview.
- (2) Written examinations to be given to applicants shall be approved by the Board.
- (3) All applicants admitted to the written examination will be required to take a general examination on ground water hydrology. In addition, each applicant will be required to take one or more specialty examinations designed to test the competence and ability of the applicant to perform the work of a driller or installer. The specialty examinations may include but are not limited to the following:
 - (a) For Driller applicants:
 1. Cable tool drilling;
 2. Air rotary drilling;
 3. Mud rotary drilling;
 4. Reverse Circulation
 5. Monitor well
 6. Geothermal Well
 - (b) For Installer applicants:
 1. Pump installation
 2. Installation of water treatment devices.
- (4) Examinations shall be offered at least four times annually in a manner and at a time and place prescribed by the Director. Applicants will not be allowed to carry any reference materials into either the written examination room or oral interview area. Each examination shall be monitored by such person(s) as may be designated by the Director, or by one or more members of the Board. No persons, other than members of the Board, monitors, and examinees will be permitted in the room while the written examination is being administered.

- (5) The grade scored by each applicant on the written examination shall be posted in the space provided upon the examinee's application form. Each applicant will be notified of his or her grade scored on the examination by first-class mail, sent to the address appearing on the application.
- (6) A minimum grade of seventy (70) percent on the general and seventy (70) percent on any other specialty exam category is required to pass the written exam, and be eligible for an interview with the Board. Individuals whose license or combination of licenses have been revoked, refused to renew or suspended must retake and pass all applicable exams.
- (7) A person failing an examination may apply for reexamination the next time examinations are offered by the Department, but no sooner than thirty (30) days from the date of the previous examination.
- (8) Interviews of applicants will be conducted before at least three members of the Board. Questioning by individual Board members to the quality and quantity of the applicant's experience will include but not be limited to, the following:
 - (a) Where and when it was obtained;
 - (b) Types of equipment used;
 - (c) What was the applicant's level of responsibility;
 - (d) Familiarity of the applicant with addressing problems such as:
 1. Construction techniques used in each type well drilled for each license applied for.
 2. Operation of drilling equipment used in drilling wells.
 3. Installation techniques and principles of operation for pumps and or water treatment devices.
 - (e) Knowledge of State well construction standards; and
 - (f) Responsibilities of licensees to the well owner and the Department.
- (9) Based on the applicant's answers to the questions in the interview, each Board member will vote for or against issuance of a license to the applicant. An applicant must receive a passing vote from a majority of the quorum present to be recommended for licensing.
- (10) Applicants who pass both the written exam and interview with the Board will be recommended for licensing to the Commissioner.
- (11) Holders of Tennessee Water Well Driller License that apply for a monitor or geothermal driller license before January 1, 2004 will not be required to appear for an oral interview. provided they pass the required geothermal or monitor specialty exam.
- (12) Experience as required in Rule 1200-4-9-.03 obtained in monitor well drilling or water well drilling by all applicants will satisfy the requirements of experience required for a geothermal well driller's license.

Rule 1000-4-9-.06 Licenses is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

- (1) Issuance. An applicant recommended by the Board and approved by the Commissioner shall be issued a license to engage in the type of business for which he has applied and has demonstrated a satisfactory level of competency to perform.
 - (a) Driller applicants shall be issued either one or combination of three licenses
 1. A water well driller license to construct wells for the production of water, (W for water wells).
 2. A geothermal well driller license to construct wells for heat transfer, (G for geothermal).
 3. A monitor well driller license to construct wells for monitoring ground water (M for monitor).
 - (b) Installer applicants shall be issued one or a combination of two licenses
 1. A license to install pumps on wells, (P for pump installation).
 2. A license to install water treatment on wells, (T for Treatment).
 - (c) The initial certificate to be issued to a licensed driller or installer shall be nontransferable and suitable for framing. It shall contain the name of the licensee, type or class of license, date of issuance, expiration date, license number and signatures of the Director and Commissioner. A wallet-sized card bearing similar information will be issued with the certificate and shall be carried on the person of the licensee whenever engaged in the well contracting or installer business.
 - (d) All licenses issued pursuant to these rules shall be valid for a period not to exceed one year and shall expire on July 31st following the date of issuance.
 - (e) Reciprocity to well drillers and installers licensed in other states will be granted by the Department provided the applicant makes a written request for reciprocity and the applicant meets the requirements of the written exam as required under Rule 1200-4-9-.05, (6), the applicant is currently licensed in the state for the same category and in good standing in that state and reciprocal privileges have been granted by that state to a licensee in Tennessee. An oral interview will not be required.
 - (f) A licensee shall not allow any individual to operate under his license unless the individual to be supervised by the licensee is employed by the licensee and holds an installer or rig operator card. Proof of employment must be on file with the Department prior to commencement by the employee of any activities requiring supervision. Proof of employment shall consist of a notarized Affidavit of Supervision.
 - (g) All persons licensed by the Department under these rules shall keep the Department advised of their current address and must readily accept all mail sent to them by the Department.
 1. The Department shall be notified of any change of address, phone number or company name within thirty (30) days of change.
 2. For purposes of these rules, registered or certified mail sent with proper postage to the licensee's last known address shall be considered adequate notification regardless of whether it is accepted or returned unclaimed.

3. Because of the Department's duty to supervise license holders and because written communication is a necessary aspect of such supervision, a licensee's refusal to accept mail or failure to claim registered or certified mail is a violation of these regulations and may result in enforcement action.
- (h) All holders of licenses shall, when requested by the Division of Water Supply, give twenty-four hour advance notice to the Division of Water Supply upon which any well construction, reconstruction or any part thereof, any well closure, well development or the installation of any pumping equipment or water treatment devices shall take place. This notification shall include the owner's name, address and location of the work site.
 - (i) In order to renew any license or combination of licenses, the licensee shall submit to the Commissioner satisfactory proof of a minimum of five clock or credit hours of training approved by the Board of Ground Water Management or Director completed during the license renewal period. First year license holders are not required to submit continuing education credits in order for renew their license for their first year of renewal.
 - (j) Approved training shall be designed to improve, advance or extend the licensee's professional skill and knowledge relating to the ground water industry such as well drilling, pump installation and water treatment courses. Training may consist in any of the following, provided there is satisfactory proof of completion acceptable to the Commissioner or Board.
 1. Courses, seminars, workshops or lectures;
 2. Extension studies and correspondence courses;
 3. Papers published in professional journals and requiring peer review;
 4. Lectures and scheduled courses at national or regional meetings of the National Ground Water Association, Tennessee Ground Water Association or its successors;
 5. College-level or postgraduate course work given by accredited college or university;
 6. Assignment of Credit
 - (i) For courses for which continuing education units (CEUs) have been assigned, one CEU is equal to fifty minutes of instruction, that is approved by the Board;
 - (ii) Credits shall be approved on an hour for hour basis for attendance at an approved training program;
 - (iii) Credits are approved on a two for one hour basis for the instructor of an approved program;
 - (iv) One credit hour is approved for attendance at the annual National Ground Water Association Convention or South Atlantic Jubilee;
 - (v) One credit hour is approved for attendance at a state association convention;
 - (vi) Credits are approved on a credit hour for credit hour basis for a course, seminar or workshop approved by the National Water Well Association for continuing education;

- (vii) Credit hours may not be carried over to a new CEU cycle.
7. Procedures for Approval of Activities;
- (i) Activities submitted for approval shall be on a form provided by the Director and shall include the following information;
 - (I) Description of course or activity matter;
 - (II) Length of activities in hours;
 - (III) Name of instructor and qualifications;
 - (IV) Date, time and location.
 - (ii) A change in subject matter, length or instructor requires resubmital and approval of the Director.
8. Proof of Continuing Education
- (i) The licensee is responsible for the submission of proof of all approved training. Inability of the applicant to substantiate credit hours submitted is grounds for disallowance of the credits in question.
 - (ii) Proof of continuing education consists of;
 - (I) Official transcripts from educational institution;
 - (II) A certificate or other documentation signed by the Instructor or sponsor of the training attesting to the satisfactory completion of the training;
 - (III) Other documentation determined by the Director in light of the nature of training, to establish that training was actually received by the applicant;
 - (iii) A licensee that fails to satisfactorily complete the required continuing education credits due to an unusual event such as an incapacitating illness or similar unavoidable circumstances may make a written request to the Director or Board for an extension of time to do so. All requests by licensees for an extension of time must be made in writing by certified mail before July 31 of each renewal year.
- (2) Renewal. Before a license can be renewed, a license holder in good standing must file an application for renewal on a form made available by the Director and submit with the completed application the annual fee as specified in the Act and continuing education credits on or before July 31st of each year.
- (a) Upon approval by the Commissioner a renewal license will be issued for a period not to exceed one year and shall expire on July 31st following the date of issuance.
 - (b) A renewal certificate shall consist of a wallet-sized card in duplicate containing at least the name of the license, type or class of license, license number, expiration date and signature of the Commissioner. One section of the card shall be kept with the original license certificate and the duplicate shall be carried on the person of the licensee whenever engaged in the water well business.

- (c) If the application and fee for renewal of a licensee is not received by the Director by the date of expiration, that license cannot be renewed and the license holder must file a new application to obtain a valid license.
 - (d) A duplicate license to replace any lost, destroyed or mutilated license will be issued by the Director upon receipt of written request from the licensee and a payment of fifteen dollars (\$15.00) to cover the cost of reissuance.
 - (e) If a licensee's employees will at any time be in charge of well construction or pump or water treatment installation in the absence of the licensee, he shall request the Director to issue a wallet-sized identification operator card for them. This card shall bear the name of the employee to whom it is being issued and the signature and license number of the licensee under whose supervision the work is being performed. The card shall be carried by the licensee's employee at all times at the work site.
 - (f) A decal shall be issued for identification purposes for each drilling rig and service vehicle registered by a well drilling contractor or installer. The decal shall be prominently displayed where it can be seen at all times from outside the vehicle.
 - (g) Decals furnished for drilling rigs and service vehicles are not transferable. The decals shall be removed and destroyed when a drilling rig or service vehicle is sold, traded or otherwise disposed of. A new decal for a newly acquired drilling rig or service vehicle will be provided without cost upon receipt of a written notice of acquisition of a different drilling rig or service vehicle.
 - (h) All drill rigs, water trucks, pump trucks, and other commercial vehicles transporting equipment used by well drillers and installers shall be permanently and prominently marked on the driver side door of the rig or vehicle for easy identification with name, (first and last) of the person who is licensed, and letters "TN Lic" with the appropriate well driller or installer license number. The letters and numerals shall be bold in print, on a background of contrasting color, and not less than two (2) inches in height. Magnetic signs will not be allowed.
 - (i) If the application, renewal fee or requirements for continuing education are not received by the Director by the date of expiration, the license shall expire. Expired licenses may be reissued without examination or board appearance if the renewal fee and application are submitted within twelve (12) months of the date of expiration, all requirements for continuing education have been met and no additional monies are owed to the Department.
 - (j) No person shall construct, reconstruct, or repair, or cause to be constructed, reconstructed or repaired any well; nor shall any person install, repair, or cause to be installed or repaired any pump, pumping equipment, water filter or water treatment device to be used on a well except in accordance with the provisions of the Well Act (T.C.A. 69-11-101 et seq.) and these rules.
 - (k) Every well driller, within sixty days after completion of drilling a water well or geothermal well, shall submit a report on the construction, reconstruction or closure of the well to the Department. The well completion report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department.
- (3) A Notice of Intent to drill a water well or geothermal well must be submitted by the property owner or the licensed well driller to the Director, prior to any commencement of drilling a water well, or geothermal well on a property in Tennessee. The licensed driller is required to have sufficient documentation that a

Notice of Intent has been submitted to the Division of Water Supply before beginning operations at a well site. Sufficient documentation for a Notice of Intent being filed may include one of the following:

1. Copy of the filed Notice of Intent at the drill site.
 2. Confirmation number of the Notice of Intent issued by the Department.
 3. Fee receipt of the Notice of Intent .
- (m) The Notice of Intent fee or copy of the receipt for a Notice of Intent fee shall accompany the submission of the driller's report. No well shall be drilled unless the driller has documentation that a Notice of Intent has been filed. All well reports shall be submitted with documentation of the Notice of Intent fee being paid. Documentation shall consist of the receipt originating from a Notice of Intent or money collected and enclosed with the original driller's report by the driller for the Notice of Intent. A Notice of Intent and fee is not required for well closure, deepening or reworking any water well or geothermal well. The amount of the Notice of Intent shall be reviewed by the Department at least every five years and shall currently be scheduled for the following:
1. Water wells for production of water per property site \$ 75.00
 2. Geothermal well system (closed loop), twenty wells or less \$150.00
 3. Geothermal well system (closed loop) over twenty wells \$500.00
- (i) The requirement to the Department of a Notice of Intent fee payment shall not apply to water wells or closed loop geothermal wells drilled in any local jurisdiction which is authorized, by private act or pursuant to the provisions of an adopted "home rule" charter, to regulate the location and construction of these wells and which has established a fee for the inspection of both geothermal and water wells approved by the Commissioner.
 - (ii) The payment of a Notice of Intent fee to the Department shall not apply to any property owner who has filed a Notice of Intent and paid the required fee for the same property the first Notice of Intent was filed with within the last five years. The property owner or driller must identify on the new Notice of Intent submitted for the property the identification number previously submitted on the first Notice of Intent fee submitted.
 - (iii) Checks returned for insufficient funds will be charged an established check processing fee and the Division will seek payment from the individual responsible for writing the check.
 - (iv) A Notice of Intent shall expire one hundred and eighty days from the original date filed by the well driller or homeowner.
- (n) When strict compliance with these standards is impractical, the driller or installer shall make application to the Department for approval of equivalent alternative standards (a variance) prior to the work being done. The Department may grant the request for a variance if it determines the proposed standards offer an equivalent or higher level of protection to the environment. In an emergency or in exceptional instances, the Department will respond to a verbal request provided the applicant submits a written application within ten (10) days of the verbal application.

- (o) Every well driller, within sixty (60) days of closure of a water well or geothermal well, shall submit a report of the closure of the well to the Department. The well closure report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department. The report shall include the same information as required on the completion report and shall include specific information on how the well was closed and the placement and type of backfill placed in the well bore. The closure report shall be signed by the licensed well driller.

Rule 1200-4-9-.07 is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

- (1) The Commissioner may suspend or revoke a license or operator card and or refuse to issue or renew a license or operator card if he finds that the applicant for or holder of such license:
 - (a) has intentionally made a material misstatement in the application for such license;
 - (b) has willfully violated any provision of this chapter or any rule or regulation promulgated pursuant thereto;
 - (c) has obtained or attempted to obtain, such license by fraud or misrepresentation;
 - (d) has been guilty of fraudulent or dishonest practices; or
 - (e) has demonstrated a lack of competence as a driller of wells or as an installer;
 - (f) has failed to comply with an order or assessment issued by the Commissioner; or
 - (g) has been convicted of a felony.
- (2) A holder of a license which has been revoked in accordance with this rule, after a waiting period of not less than one (1) year after the license was revoked, may petition the Commissioner for a hearing for reinstatement of his license.
- (3) Upon suspension, revocation or non-renewal of a license or combination of licenses, the Commissioner may with advice from the Board, impose such terms and conditions as in his judgment shall be considered just.
- (4) Any person whose license is suspended , revoked or non-renewed shall not perform the duties of a well driller or installer in the State of Tennessee, or work under the supervision of a licensed driller or installer.
- (5) The Board may recommend reissuance of a license to any person whose license has been revoked upon written application to the Board by the applicant, showing good cause to justify such reissuance.

Paragraph (1) Requirements of Rule 1200-4-9-.10 Water well construction standards is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

These rules will apply solely to wells constructed for the production of water from underground sources and have no application to wells constructed for quarry blast holes or mineral prospecting, or any purpose other than production of water.

- (1) Requirements

- (a) No person shall construct, reconstruct, or repair, or cause to be constructed, reconstructed or repaired any water well; nor shall any person install, repair, or cause to be installed or repaired any pump, pumping equipment, water filter or water treatment device to be used on a water well except in accordance with the provisions of the Wells Act (T.C.A. 69-11-101 et seq.) and these rules.
- (b) Every well driller, within sixty days after completion of a water well, shall submit a report on the construction or reconstruction of the well to the Department. The well completion report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department.

Paragraph (4) of Rule 1200-4-9-.10 Drilling Fluids is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

(4) Drilling Fluids

- (a) Water used during the construction of a water well shall be obtained from a public water supply, water well or protected springbox. Water taken from ponds, lakes, streams or other surface sources shall not be used.
- (b) All water used shall also be treated with enough liquid bleach or hypochlorite granules to retain a free chlorine residual of at least two (2 ppm) parts per million.
- (c) The driller shall denote on the water well report submitted to the Department from what source his drilling process water was obtained.
- (d) Drilling fluids and additives shall be materials specified by the manufacturer for use in water well construction and approved by the Department.
- (e) During the course of drilling a water well with air rotary equipment, a minimum of one (1) gallon of water per minute must be injected or added into the air stream. The amount of water injected shall be sufficient to control dust and to keep the hole cleaned out.
- (f) The amount of rock drill oil used to lubricate down hole drilling hammers shall not exceed hammer manufacturer's recommendations. The oil used to lubricate the hammer shall be specifically designed for that purpose.
- (g) Petroleum based products or byproducts spilled or leaked from a drill rig or pump truck in any quantity greater than one (1 qt.) quart shall be immediately removed from the area within a twenty-five (25) foot radius around the well by the driller or installer responsible for the spill.

Subparagraph d of paragraph (5) Casing Rule 1200-4-9-.10 is amended by deleting in its entirety and substituting the following language, so that as amended, the subparagraph shall read:

- (d) In areas where the water is obtained from overburden above the consolidated rock surface, the casing shall be set at or just above the consolidated rock. A screen may be attached to the bottom of the casing, provided the top of the screen is at least 19 feet below land surface. The completed well shall be finished so that extraneous material such as sediment cannot enter the well.

Subparagraph e of paragraph (6) Backfilling and Grouting Rule 1200-4-9-.10 is amended by deleting in its entirety and substituting the following language, so that as amended, the subparagraph shall read:

- (e) If cement-based grout or bentonite based grout is used for backfill, it shall be placed around the casing by one of the following methods:

1. Pressure

The annular space between the casing and the borehole wall shall be a minimum of one and five-tenths (1.5) inches, and grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular space around the casing and overflows at the surface; or

2. Pumping

The annular space between the casing and formation shall be a minimum of one and five tenths (1.5) inches and grout shall be pumped into place through a pipe or hose extended to the bottom of the annular space which can be raised as the grout is applied, but the grout pipe or hose shall remain submerged in grout during the entire application; or

3. Other

The annular space between the casing and the borehole wall shall be a minimum of two (2) inches and the annular space shall be completely filled with grout by any method that will insure complete filling of the space, provided the annular area does not contain water or other fluid. If the annular area contains water or other fluid, it shall be evacuated of fluid or the grout shall be placed by the pumping or pressure method.

Paragraph (7) Well Screens Rule 1200-4-9-.10 is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

(7) Well Screens

- (a) Any water well finished in an unconsolidated rock formation shall be equipped with a pre-manufactured well screen that will adequately prevent the entrance of soil or formation material into the well after the well has been developed and completed by the well contractor.

- (b) The well screen shall:

1. Be of steel, stainless steel, plastic or other Department approved material and shall be of a strength to satisfactorily withstand chemical and physical forces applied to it during and after installation;
2. Be of a design to permit optimum development of the aquifer with minimum head loss consistent with the intended use of the well;
3. Have openings designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging; and
4. Be provided with such fittings as are necessary to seal the top of the screen to the watertight casing and to close the bottom. If the screen is installed through the casing, a packer, seal or

other approved design shall be used to prevent the entry of ground water into the well through any openings other than the screen.

- (c) Multi-screened wells shall not connect aquifers or zones which have differences in:
 - 1. Water quality to the extent that intermixing of the waters would result in deterioration of the water quality in any aquifer or zone.
 - 2. Static water levels that would result in depletion of water from any aquifer or zone, or significant loss of head in any aquifer or zone.

Paragraph (8) Gravel-Pack Wells Rule 1200-4-9-.10 is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

(8) Gravel-Packed Wells

- (a) In constructing a gravel-packed well:
 - 1. The gravel shall be composed of quartz, granite, or similar rock material and shall be clean, rounded, uniform, water-washed and free from clay, silt, or other deleterious material.
 - 2. The gravel shall be placed in the annular space around the screens and casing by any method that will insure accurate placement and avoid bridging or segregation.
 - 3. The gravel pack shall have a minimum thickness of at least one-inch and shall not extend more than ten (10) feet above the top of the screen .
 - 4. The gravel shall be disinfected using water with a free chlorine residual of at least 50 parts per million (ppm).
- (b) The gravel pack shall not connect aquifers or zones which have differences:
 - 1. In water quality that would result in deterioration of the water quality in any aquifer or zone.
 - 2. In static water levels that would result in depletion of water from any aquifer or significant loss of head in any aquifer or zone.

Paragraph (10) Well Development Rule 1200-4-9-.10 is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

(10) Well Development

Prior to completion of a well for water supply, the driller shall take all steps necessary to:

- (a) Remove any mud, drill cuttings, or other foreign matter from the entire depth of the well;
- (b) Correct any damage to the aquifer that might have occurred during drilling; and
- (c) Disinfect the well.
- (d) Fracturing as an aid in water well development:

1. Fracturing includes the use of explosives, acid or pumping fluids or air into water well in an attempt to increase the yield of the well. General water well disinfection procedure with chlorine is not considered fracturing. A licensed driller shall supervise fracturing and submit a rework report for each site.
2. Water used in fracturing must be obtained from a public water supply, water well or protected springbox and chlorinated a minimum of two (2 ppm) parts per million chlorine residual prior to injection.
3. Wells located closer to fifty feet from known sources of pollution shall not be fractured. Known sources of pollution include but are not limited to septic tanks field lines and sewers.
4. All packers set in a zone to be fractured by fluid or air must be placed at depths greater than fifty feet below land surface or a depth greater than twenty feet below the bottom of water tight casing, or whichever is greater in depth from land surface.
5. The driller shall submit a report of driller within sixty days upon completion of fracturing the well reworking the well, and denote in the comments section the zone fractured, water used and amount of pressure induced on each zone.

Rule 1200-4-9-.15 is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

- (1) A well completion report shall be submitted to the Department on a form provided or approved by the Department within sixty days after completion of the drilling, construction, reconstruction or closure of each water well.
- (2) The report shall be true and accurate. The report shall include as a minimum the following accurate information about the well. Footage shall be accurate to the nearest foot of measurement:
 - (a) Name and address of the person for whom the well was drilled;
 - (b) The location of the well as denoted by county, street address and road name;
 - (c) The location of the well as denoted by driller map number coordinate or latitude and longitude of the well;
 - (d) Proposed use of the well ;
 - (e) The date completed for each well;
 - (f) The “log” of the well;
 - (g) The depth, diameter and general specifications for the well including;
 1. Casing lengths used, type, diameter, wall thickness or SDR rating;
 2. Liners used, location ,type diameter, wall thickness or SDR rating;
 3. Bottom depth of casing, and depth of screen or slotted pipe;

4. Type backfill material used and location of backfill, and location of packers;
 5. Static water level, depth to bedrock, (if encountered) for bedrock wells only;
 6. Estimated yield of well in gallons per minute for bedrock wells only;
 7. Water bearing zones encountered in excess of one gallon per minute for bedrock wells only;
 8. General water quality.
- (h) Licensed driller's name and contractor identification number;
 - (i) The well driller tag number and Notice of Intent Number;
 - (j) Information on well head completion, i.e. well cap, well disinfection, confirmation by the driller that septic tank and field lines are located fifty feet or greater from well.
- (3) The original report shall be signed by the licensee and submitted to the Director. The licensed driller shall maintain a copy of each report and fee payment submitted for five years.
 - (4) The driller is required to obtain a written contract from the owner concerning general costs to be incurred by the owner for construction or closure of the water well. This contract shall also include a maximum depth authorized by the owner to drill.
 - (5) The driller may obtain a written statement from the owner not requiring a written contract if both parties agree not to require a written contract.

Rule 1200-4-9-.16 is amended by deleting in its entirety and substituting the following language, so that as amended, the paragraph shall read:

1200-4-9-.16 WELL CLOSURE GEOTHERMAL AND WATER WELL

- (1) The driller shall backfill and close any newly drilled water well or geothermal well not intended for use or in which casing has not been installed or from which casing has been removed, within 15 days after the drill rig leaves the site. The driller shall take all steps necessary to maintain safety around the site until the closure process is completed. Prior to closing any such well, the driller shall:
 - (a) Remove all equipment or material that may obstruct access to the bottom of the well;
 - (b) Check the entire depth of the well for obstructions that may interfere with sealing operations and remove them, and
 - (c) Thoroughly chlorinate the well prior to sealing by the addition of sufficient quantities of liquid bleach or dry hypochlorite granules to produce a free chlorine residual of 25 parts per million (ppm).
- (2) Except as provided in paragraphs (3), (4),(5) and (6) water well and geothermal plugging and closure shall be accomplished by a licensed driller by the following methods:
 - (a) For uncased water or geothermal wells without thermal transfer pipe, a cement grout or bentonite as defined in Rule 1200-4-9-.16 (2) (c) shall be placed in the well bore from two feet below

land surface to a minimum of twenty-five (25) feet below land surface. Native soil may be used to backfill the borehole from land surface to two feet below land surface or the driller may use cement or bentonite to land surface. The well bore below twenty-five (25) feet below land surface shall be filled with either bentonite, cement grout, clean crushed stone one half inch in diameter or less, well cuttings, puddled clay, sand or combined mixture of any of these listed materials. Backfill shall remain level with landsurface.

- (b) For water wells or geothermal wells with a minimum of nineteen feet of casing installed, a surface plug consisting of either cement grout or bentonite as defined in Rule 1200-4-9-.16 (2) (c) shall be placed in the well bore from land surface to a minimum of five (5) feet below land surface. An additional seal of cement grout or bentonite as defined in Rule 1200-4-9-.16 (2) (c) shall also be placed in the well bore for a minimum length of ten feet. The top of this ten foot seal shall either be located either within twenty feet below the bottom of the casing or at the top of the well screen or perforated pipe. The remaining well bore or casing shall be backfilled with either bentonite, cement grout, clean crushed stone one half inch in diameter or less, well cuttings, puddled clay, sand, or combined mixture of any of these listed materials. Surface casing may be terminated two feet below land surface and native soil may be placed in the well bore from two feet to land surface provided that the upper surface plug of cement or bentonite grout is placed in the borehole from two to seven feet below land surface. Backfill shall remain level with landsurface.
 - (c) The grout material used in the plugging and abandonment of a water well or a geothermal well shall consist of a mixture of Portland Class A cement or quick setting cement in a ratio of not over six (6.0) gallons of water per ninety-four (94) pound sack of cement, or a high solids bentonite grout with a minimum of 20% solids and a weight of no less than nine and two tenths (9.2) pounds per gallon as measured by a standard mud balance. The use of bentonite, in chip or tablet form, ranging in size from one-quarter inch (1/4") to three-quarters of an inch (3/4) will be allowed as an alternate seal to slurry grouting. The bentonite shall be mixed and applied in accordance with the manufacturer's recommendations. The use of low solids bentonite drilling clay (designed for use as a drilling fluid to form a filter cake on the side walls of the borehole and to increase viscosity of water) is prohibited for use as a grout or sealing material except as an additive. Only bentonite grout, bentonite tablets, or bentonite chips, approved by the National Sanitation Foundation (NSF) or American National Standards Institute (ANSI) certified parties as meeting NSF product standard 60 or 61 shall be approved by the Department as appropriate grouting or sealing material.
 - (d) Placement of the backfill material shall be done in such a way that there are no bridges or gaps in the well bore. The top of the backfill material shall remain level with land surface.
- (3) Wells extending into more than one aquifer shall be filled and sealed in such a way that exchange of water from one aquifer to another is prevented.
 - (4) The sealing of flowing wells shall be accomplished only after the wells have been treated to reduce the flow to zero. This may be accomplished by introducing high specific gravity fluids which are approved for use in potable water systems into the bottom of the well bore and continuing until the flow ceases.
 - (5) The driller may submit a written petition for an alternative method of well abandonment. Any alternate method of filling and sealing a well shall be submitted to the Director for review and written approval prior to sealing a well by such method. In an emergency or in exceptional instances, the Department will respond to a verbal request provided the applicant submits a written application within ten (10) days of the verbal application.

- (6) Hand dug water wells greater than twelve inch in diameter without steel or plastic casing and less than sixty feet in depth may be abandoned by a landowner, or the following individuals licensed in Tennessee: licensed engineers, licensed professional geologists, licensed building contractors, licensed pump installers, county environmentalists, or environmental specialists for the state of Tennessee. They must all follow the construction standards for the closure of a hand dug well. The landowner should contact the Division of Water Supply or a licensed driller prior to closing a hand dug well for additional technical assistance. The person closing the hand dug well is responsible for submitting the well closure report for the hand dug well. A landowner who does the well closure is not required by law to complete a well closure report; however it is recommended that the landowner submit a letter to the Division of Water Supply similar to information submitted on a well closure report. The information serves as a public record of the landowners' compliance with state well construction standards and will be important information for land appraisals and property transfer arrangements. No matter who does the job, the landowner is ultimately responsible for the closure of a hand dug well.
- (7) Hand dug wells may be closed by using the following procedures;
 - (a) Thoroughly chlorinate the well prior to sealing by the addition of sufficient quantities of liquid bleach or dry hypochlorite granules to produce a free chlorine residual of twenty-five (25ppm) parts per million within the entire well.
 - (b) Cement grout or bentonite as defined in Rule 1200-4-9-.16 (c) must be used from five feet to two feet below land surface to place a barrier for the well. The remaining annular space from two feet to land surface may be filled with native soil or cement. Backfill must remain level with land surface.
 - (c) Construction debris, trash or wood are prohibitive materials and must never be used during the well closure process.
 - (d) Native soil material, gravel less than one inch or less in diameter, cement or bentonite may be used as well closure material from five feet below land surface to the total depth of the well.
- (8) All well closure reports shall include a diagram showing the location and distance in feet of the closed well from one specific landmark and septic system or sewer systems on the property.

Authority: *T.C.A. §§69-11-106 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 18th day of February, 2003. (02-10)

**DEPARTMENT OF HEALTH - 1200
BOARD FOR LICENSING HEALTH CARE FACILITIES
DIVISION OF HEALTH CARE FACILITIES**

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CST) on the 15th day of April, 2003.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities 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 Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-8-6
STANDARDS FOR NURSING HOMES**

AMENDMENTS

Rule 1200-8-6-.06, Basic Services, is amended by deleting paragraph (12) in its entirety and substituting instead the following language, so that as amended, the new paragraph (12) shall read:

- (12) Nurse Aide Training and Competency Evaluation. All nurse aide training programs must comply with the federal nurse aide training and competency regulations, promulgated pursuant to the Omnibus Budget Reconciliation Act of 1987 and in accordance with federal labor laws, including but not limited to, minimum age requirements. Copies of these regulations may be obtained from the department.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

Rule 1200-8-6-.06, Basic Services, is amended by deleting subpart (12)(a)1.(v) in its entirety and substituting instead the following language, so that as amended, the new subpart (12)(a)1.(v) shall read:

- (12) (a) 1. (v) The minimum passing grade for each test shall be seventy-five percent (75%) for the written or oral component. The performance demonstration portion of the test shall consist, at minimum, of five performance tasks, which shall be selected randomly for each registrant from a pool of skills evaluation tasks ranked according to degree of difficulty, with at least one task selected from each degree of difficulty.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.*

Rule 1200-8-6-.06, Basic Services, is amended by deleting part (12)(a)4. in its entirety and substituting instead the following language, so that as amended, the new part (12)(a)4. shall read:

- (12) (a) 4. A practical and written test will be developed to reflect that a trainee has acquired the minimum competency skills necessary to become a competent and qualified nurse aide. The Nurse Aide Advisory Committee, composed of twelve (12) members with at least three (3) members nominated by the Tennessee Health Care Association, will periodically review testing materials, and set criteria for survey visits of the nurse aide programs.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.*

Rule 1200-8-6-.06, Basic Services, is amended by deleting subparts (12)(b)3.(iii) and (12)(b)3.(v) in their entirety and substituting instead the following language, and is further amended by adding the following language as new part (12)(b)4., so that as amended, the new subparts (12)(b)3.(iii) and (12)(b)3.(v) and the new part (12)(b)4. shall read:

- (12) (b) 3. (iii) The provision of direct individual care to residents by a trainee is limited to appropriately supervised clinical experiences; a program instructor must be present or readily available on-site during all clinical training hours including direct patient care for the seventy-five (75) hour training program. All activities of daily living (ADL) skills, including but not limited to, bathing, feeding, toileting, grooming, oral care, perineal care, must be taught prior to student performing direct patient care;
- (12) (b) 3. (v) Each trainee demonstrates competence in clinical skills and fundamental principles of resident care;
- (12) (b) 4. Student to teacher ratio must be as follows: 25:1 in classroom and 10:1 for direct patient care training.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.*

Rule 1200-8-6-.06, Basic Services, is amended by adding the following language as new part (12)(b)3. and renumbering the remaining parts accordingly:

- (12) (b) 3. Each training program shall have a pass rate on both written and performance exams of at least 70%. Annual reviews of Nurse Aide Training Programs shall include:
- (i) Letter of commendation for exceptional pass rate as evaluated by the department;
 - (ii) Letter of concern for programs having one year of test results below 70%;
 - (iii) Request for plan of program improvement for programs with two consecutive years of test results below 70%;
 - (iv) Request to appear before the Board for programs with two consecutive years of test results below 70%; and
 - (v) Program is subject to closure after demonstration of a consistent pattern of poor test performance.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.

Rule 1200-8-6-.11, Records and Reports, is amended by adding the following language as new paragraph (4), so that as amended, the new paragraph (4) shall read:

- (4) A yearly statistical report, the “Joint Annual Report of Nursing Homes”, shall be submitted to the Department. The forms are mailed to each nursing home by the Department each year. The forms shall be completed and returned to the Department as requested.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-804.

The notice of rulemaking set out herein was properly filed in the Department of State on the 7th day of February, 2003. (02-02)

**BOARD OF MEDICAL EXAMINERS - 0880
ADVISORY COMMITTEE FOR ACUPUNCTURE**

There will be a hearing before the Tennessee Board of Medical Examiners’ Advisory Committee for Acupuncture to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-6-1004, 63-6-1005, and 63-6-1009. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 28th day of April, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULE

AMENDMENT

Rule 0880-12-.06 Fees, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- | | | |
|---|----------|----------|
| (3) Biennial renewal fee to be submitted every two (2) years when certification renewal is due. | \$500.00 | \$ 50.00 |
|---|----------|----------|

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-6-1004, 63-6-1005, and 63-6-1009.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of February, 2002. (02-15)

**THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES - 0940
DIVISION OF MENTAL RETARDATION SERVICES**

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of new Chapter 0940-4-3 (Surrogate Decision Making), pursuant to Tenn. Code Ann., Section 33-1-302, 305, and 307. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-204, and will take place in the Cumberland Room, Cordell Hull Building, 450 Fifth Avenue, North, Nashville, Tennessee, at 1 p.m. on April 17, 2003.

Written comments will be considered if received by close of business, May 19, 2003, at the DMHDD Office of Legal Counsel, 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, 5th 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 entire text of this notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 450 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6520

SUBSTANCE OF PROPOSED RULES

**NEW CHAPTER 0940-4-03
SURROGATE DECISION MAKING FOR INDIVIDUALS
WITH MENTAL RETARDATION OR MENTAL IMPAIRMENT
RELATED TO DEVELOPMENTAL DISABILITIES**

TABLE OF CONTENTS

0940-4-03-.01 Purpose	0940-4-03-.05 Qualifications of a Surrogate Decision-Maker
0940-4-03-.02 Scope	0940-4-03-.06 Duties of a Surrogate Decision-Maker
0940-4-03-.03 Definitions	0940-4-03-.07 Rights of a Surrogate Decision-Maker
0940-4-03-.04 Assessment of Capacity to Make Informed Decisions	0940-4-03-.08 Duties of a Service Provider

0940-4-03-.01 PURPOSE.

- (1) This chapter establishes a process to obtain timely and appropriate delivery of routine medical, dental, or mental health treatment for individuals with mental retardation or mental impairment related to a developmental disability who lack capacity to make informed decisions and do not have a:
 - (a) Parent or guardian for individuals under age 18;
 - (b) Parent or guardian for individuals under age 16 for mental health treatment;
 - (c) Conservator, guardian or legal custodian who has court authorization to give consent for such services;
 - (d) Declaration for mental health treatment which addresses the service to be provided; or
 - (e) Attorney-in-fact under a durable power of attorney for health care for the services to be provided.

0940-4-03-.02 SCOPE.

- (1) These rules apply to:
 - (a) An adult with mental retardation or mental impairment related to a developmental disability;
 - (b) An adult who is in need of a single routine medical, dental, or mental health treatment or course of treatment; and
 - (c) An adult who lacks capacity to make an informed decision based on an evaluation under Rule 0940-1-6.
 - (d) A child who does not have a parent, legal guardian or legal custodian.
- (2) These rules do not apply to:
 - (a) An adult who has:

1. The capacity to make an informed decision about routine medical, dental or mental health treatment;
 2. A court-appointed conservator or an attorney in-fact under a durable power of attorney with authority to make decisions; or
 3. A declaration for mental health treatment that addresses the service to be provided.
- (b) An individual under 18 years of age who has a parent, legal guardian, or legal custodian; an individual under 16 years of age who has a mental illness or serious emotional disturbance and does not have a parent, legal guardian, legal custodian or an attorney-in-fact under a durable power of attorney for health care.
- (c) Emergencies.

0940-4-03-.03 DEFINITIONS.

- (1) “Actively involved” means involvement with the individual based on the following:
 - (a) Observed interactions of the person with the individual;
 - (b) Advocacy for the best interests of the individual;
 - (c) Knowledge of and sensitivity to the individual’s preferences, values and beliefs;
 - (d) Ability to communicate with the individual; and
 - (e) Availability to the individual for assistance or support when needed.
- (2) “Conservator” means a person appointed by a court under the conservatorship law in Title 34, Chapter 3 or the Veterans Administration Guardianship law in Title 34, Chapter 5, Tenn. Code Ann., with authority to make decisions for an individual who lacks capacity to make informed decisions.
- (3) “Declaration for mental health treatment” means a document that allows an individual to indicate how he/she wants to be treated or not be treated when he/she is unable to make informed decisions about mental health treatment.
- (4) “Developmental disability” means a condition based on having either a severe, chronic disability as defined by T.C.A. § 33-1-101(10) or mental retardation.
- (5) “Durable power of attorney” (DPOA) means a legal document authorized by Title 34, Chapter 6, Part 2, Tenn. Code Ann. that allows the attorney-in-fact to make health care decisions for the individual.
- (6) “Guardian” means a person appointed by a court under the guardianship law in Title 34, Chapter 1, Tenn. Code Ann., with authority to make decisions for an individual under 18 years of age.
- (7) “Legal custodian” means a person appointed by a court under Title 37, Tennessee Code Annotated with authority to make decisions for a child who lacks capacity to make decisions.

- (8) “Mental retardation” means substantial limitations in functioning: As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and that are manifested before eighteen (18) years of age.
- (9) “Qualified examiner” means:
- (a) A licensed physician to determine capacity to make an informed decision about routine medical or mental health treatment;
 - (b) A psychologist to determine capacity to make an informed decision about routine mental health treatment;
 - (c) A licensed dentist to determine capacity to make an informed decision about routine dental care.
- (10) “Routine treatment” means commonplace, everyday medical, dental or mental health treatment but excludes psychosurgery, convulsive therapy, and elective surgery or services solely for behavior control of an individual.
- (11) “Service provider” means an individual who provides routine medical, dental, or mental health treatment for individuals with a diagnosis of mental retardation or mental impairment related to a developmental disability.
- (12) “Severe, chronic disability” in a person:
- (a) Over five (5) years of age means a condition that:
 - 1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - 2. Is manifested before twenty-two (22) years of age;
 - 3. Is likely to continue indefinitely;
 - 4. Results in substantial functional limitations in three (3) or more of the following major life activities:
 - (i) Self-care;
 - (ii) Receptive and expressive language;
 - (iii) Learning;
 - (iv) Mobility;
 - (v) Self-direction;
 - (vi) Capacity for independent living; and

- (vii) Economic self-sufficiency; and
- 5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is likely to continue indefinitely and to need to be individually planned and coordinated.
- (b) Up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five (5) years of age if services and supports are not provided.
- (13) "Surrogate decision-maker" means, in descending order of preference, an actively involved spouse, adult child, parent or stepparent, adult sibling, adult relative or other adult as identified by the service provider who has decision-making capacity and is willing to make decisions on routine medical, dental or mental health treatment on behalf of an individual.

0940-4-03-.04 ASSESSMENT OF CAPACITY TO MAKE AN INFORMED DECISION.

- (1) Capacity to make informed decisions must be presumed for each individual unless the individual has a conservator (adult), parent, guardian or legal custodian (when the individual is under 18 years of age) empowered by the court to make such decisions.
- (2) When a service provider has reasonable cause to believe that an individual lacks capacity to make informed decisions, he/she must arrange for a qualified examiner to assess capacity under Department of Mental Health and Developmental Disabilities Rule 0940-1-6.
- (3) If the results of the assessment of capacity indicate that the individual:
 - (a) Has the capacity to make an informed decision, only the individual can make the decision regarding the specific treatment recommended;
 - (b) Lacks the capacity to make an informed decision regarding the routine medical, dental or mental health treatment, then a surrogate decision-maker may be designated.
- (4) The results of the assessment and resultant action must be documented and maintained in the individual's record. The documentation must at least contain a description of the evidence obtained which supports either that the individual can make an informed decision or that there is a designated surrogate decision-maker.

0940-4-03-.05 QUALIFICATIONS OF A SURROGATE DECISION-MAKER.

- (1) A surrogate decision-maker must be an adult whom the individual and must be one of the following adults in descending order of preference:
 - (a) The individual's spouse;
 - (b) The individual's adult child;
 - (c) The individual's parent or stepparent;

- (d) The individual's adult sibling;
 - (e) Any other adult relative of the individual; or
 - (f) Any other adult.
- (2) A surrogate decision-maker must:
- (a) Know about the individual's developmental disability and condition as it relates to the recommended service
 - (b) Be actively involved in the individual's life;
 - (c) Be willing to make a decision for the individual on the recommended service;
 - (d) Appear to be reasonably capable of making such a decision and likely to make it objectively in the individual's best interest; and
 - (e) Appear to have no conflict of interest with the individual.

0940-4-03-.06 DUTIES OF A SURROGATE DECISION-MAKER.

- (1) Obtain information on the following:
- (a) The nature of the proposed treatment or procedure;
 - (b) The possible risks, including side effects and potential benefits of the proposed treatment, procedure or course of action;
 - (c) The alternative treatments or courses of action and their attendant risks and potential benefits; and
 - (d) The period of time involved such as the immediacy of the need for treatment and the length of time the consent will remain valid.
- (2) Make treatment decisions for an individual who lacks capacity and does not have a conservator, guardian, legal custodian, DPOA or declaration for mental health treatment, which addresses the routine treatment recommended. The surrogate decision-maker may give or withhold consent for treatment.
- (3) If a surrogate decision-maker wishes to discontinue acting as a surrogate, notify the service provider.
- (4) The authority of the surrogate decision-maker continues as long as the individual lacks capacity.

0940-4-03-.07 RIGHTS OF A SURROGATE DECISION-MAKER.

- (1) A surrogate decision-maker who acts in good faith, reasonably and without malice in connection with the decision is free from all liability, civil or criminal, by reason of the surrogate's decision.

0940-4-03-.08 DUTIES OF A SERVICE PROVIDER.

- (1) Follow the decision of an individual who has capacity to make an informed decision.
- (2) When a service provider has reasonable cause to believe that an individual lacks capacity to make an informed decision, s/he must determine if there is:
 - (a) a conservator, legal guardian, legal custodian to make the decision;
 - (b) an attorney-in-fact under a DPOA,
 - (c) a declaration for mental health treatment which addresses the routine treatment recommended, or
 - (d) arrange for a qualified examiner to assess capacity under Rule 0940-1-6-. 03(5)(b) or if the service provider is a qualified examiner, perform the assessment.
- (3) Take action based on the outcome in 0940-4-03-.08 (2):
 - (a) Obtain consent from the parent(s) or legal guardian if the individual is under 18 years old and not in state custody. In the absence of a parent or legal guardian, notify the Department of Children's Services.
 - (b) Obtain consent from the legal custodian if the individual is under 21 years old and in state custody.
 - (c) Obtain consent from the court appointed conservator with authority to make routine medical, dental, or mental health treatment decisions.
 - (d) Follow decisions in an individual's declaration for mental health treatment (Title 33, Chapter 6, Part 10, Tenn. Code Ann.).
 - (e) Obtain consent from an attorney-in-fact under a DPOA for health care.
 - (f) Select a surrogate decision-maker in conformity with 0940-4-03-.05, document the identity of the surrogate decision-maker and obtain consent from the surrogate decision-maker.
- (4) Arrange for reassessment of the individual's capacity to make informed decisions when the individual or the service provider, conservator, guardian, legal custodian, or attorney- in-fact under a DPOA believes the individual has capacity. Only a qualified examiner may perform a capacity reassessment.
- (5) Inform the surrogate decision-maker of:
 - (a) The nature of the proposed treatment or procedure and any immediate need;
 - (b) The possible risks, including side effects and potential benefits of the proposed treatment, procedure or course of action;
 - (c) The alternative treatments or courses of action and their attendant risks and potential benefits;
 - (d) The right to additional information; and
 - (e) The right to give or withdraw consent.

- (6) Document a surrogate decision-maker's decision in the service provider's file.
- (7) If a surrogate decision-maker withdraws from decision-making, document the decision and the justification in the service provider's file.
- (8) When a surrogate decision-maker withdraws, identify a new surrogate decision-maker if further routine treatment is needed and the individual lacks capacity to make an informed decision.
- (9) When there is no person willing or qualified to serve in the capacity of surrogate decision-maker, the service provider shall document his/her efforts to obtain a surrogate decision-maker. The service provider shall inform the individual that the required service cannot be provided without the consent of a surrogate decision-maker, conservator, guardian, legal custodian, attorney-in-fact under a DPOA or a declaration for mental health treatment.
- (10) Act in reliance on the surrogate decision-maker's decision.
- (11) If there is a disagreement about the right of a person to act as a surrogate decision-maker, notify the parties that the service may be provided when the disagreement has been resolved.

Authority: *T. C. A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-101, 33-1-302, 305, and 309; §§ 33-2-301 and 302, and 33-2-219—221*

This notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2003. (02-19)

BOARD OF REGISTRATION IN PODIATRY - 1155

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 22nd day of August, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULE

AMENDMENT

Rule 1155-3-.03, Reciprocity, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (3) and (4), so that as amended, the new paragraphs (1), (2), (3), and (4) shall read:

- (1) Reciprocity based on certification in another state – An applicant requesting certification as a podiatry x-ray operator in Tennessee based on certification in another state must be duly certified or licensed in another state, provided that state’s requirements substantially meet or exceed Tennessee’s requirements and further provided the applicant’s certification or license in the other state is current and in good standing. To receive such certification an applicant must:
 - (a) submit a completed and notarized application form as supplied by the Board, a recent photograph and the non-refundable application fee as specified in 1155-3-.06; and
 - (b) cause to be submitted directly to the Board Administrative Office official verification of current certification/licensure from the other state; and
 - (c) submit a copy of the statutes and rules governing x-ray operators from each state in which the applicant holds certification/licensure.

- (2) Reciprocity based on certification from a Tennessee licensing board – An applicant requesting certification as a podiatry x-ray operator in Tennessee based on certification from a Tennessee licensing board must be duly certified to take extremities x-rays by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination, or must be duly certified by the Tennessee Board of Chiropractic Examiners as a chiropractic x-ray technologist. To receive such certification an applicant must:
 - (a) submit a completed and notarized application form as supplied by the Board, a recent photograph and the non-refundable application fee as specified in 1155-3-.06; and
 - (b) cause to be submitted directly to the Board Administrative Office official verification of current certification from the applicable Tennessee licensing board.

- (3) Reciprocity based on certification from the American Registry of Radiological Technologists – An applicant requesting certification as a podiatry x-ray operator in Tennessee based on certification from the American Registry of Radiological Technologists must be currently registered as a registered technologist (RT). To receive such certification an applicant must:
 - (a) submit a completed and notarized application form as supplied by the Board, a recent photograph and the non-refundable application fee as specified in 1155-3-.06; and
 - (b) provide evidence of current registration from the American Registry of Radiological Technologists as a registered technologist (RT).

- (4) Application review, approval, denial, and interview decisions shall be governed by 1155-2-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-106, and 63-3-125.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of February, 2003. (02-16)

BOARD OF SOCIAL WORKER CERTIFICATION AND LICENSURE - 1365

There will be a hearing before the Tennessee Board of Social Worker Certification and Licensure to consider the promulgation of amendments to rules pursuant to T.C.A. §§4-5-202, 4-5-204, and 63-23-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 21st day of April, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1365-1-.04, Qualifications for Certification and Licensure, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Certified Master Social Worker - Must be a graduate with a master's or doctorate degree in social work, as provided in T.C.A. §§63-23-102, granted by a university, college, or school of social work accredited by the Council on Social Work Education.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-23-102, 63-23-103, and 63-23-108.

Rule 1365-1-.05, Procedures for Certification and Licensure, is amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, and is further amended by adding the following language as new subparagraph (2) (k) and renumbering the remaining subparagraphs accordingly, and is further amended by deleting subparagraphs (3) (a) and (3) (d) in their entirety and substituting instead the following language, and is further amended by deleting subparagraphs (3) (f), (3) (g), (3) (h), (3) (i), and (3) (j), in their entirety and renumbering the remaining subparagraphs accordingly, so that as amended, the new paragraph (1) but not its subparagraphs, and the new subparagraphs (2) (k), (3) (a), and (3) (d) shall read:

- (1) Certified Master Social Worker. Any individual holding a master's or doctorate degree in social work, as provided in T.C.A. § 63-23-102, granted by a university, college, or school of social work accredited by the Counsel on Social Work Education, may make application for licensure as a certified master social worker.
- (2) (k) The applicant shall instruct the examination service to send directly to the board's administrative office verification of his examination scores and level of exam taken.
- (3) (a) The board may issue a license to any person who, at the time of application, holds a valid license issued by a board of social work of any state; provided, in the board's opinion, the requirements for that original licensure are substantially equivalent to Tennessee's and the person has not previously failed the examination given by the board. The licensing state's original licensure issuance must have been based on the following, for which documentation must be provided by the applicant if deemed necessary by the board:
 1. The individual having an educational degree of master or doctor of social work, as provided in T.C.A. § 63-23-102, from a college, university or school of social work accredited by the Council on Social Work Education; and
 2. The individual having completed two years post-master's clinical experience under the supervision of an individual whose credentials are equivalent to a Tennessee LCSW; and
 3. The individual having taken and passed the Association of Social Work Boards (ASWB) clinical level approved examination in the state where the original license was issued and obtained a passing score pursuant to paragraph (8) of rule 1365-1-.08.
- (3) (d) At the time of application, an applicant shall pay the application, license, and state regulatory fees as provided in Rule 1365-1-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-23-103, 63-23-108, and 63-23-109.

Rule 1365-1-.06, Fees, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (g) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting paragraph (3) and subpart (4) (b) 4. (ii) in their entirety and substituting instead the following language, and is further amended by deleting part (4) (b) 5. in its entirety and renumbering the remaining parts accordingly, so that as amended, the new subparagraph (1) (e), the new paragraph (3), and the new subpart (4) (b) 4. (ii) shall read:

- (1) (e) License fee A nonrefundable fee to be paid prior to the issuance of the "artistically designed" license, and applies to applicants seeking licensure by examination and to applicants seeking licensure by reciprocity.

- (3) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Social Worker Certification and Licensure.

- (4) (b) 4. (ii) By Reciprocity \$ 275.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-23-103, 63-23-108, and 63-23-109.

Rule 1365-1-.08, Examinations is amended by deleting wherever they occur in this rule the entity name “American Association of State Social Workers Board” and its acronym “AASSWB”, and substituting instead the entity name “Association of Social Work Boards” and its acronym “ASWB.”

Authority: T.C.A. §§4-5-202, 4-5-204, 63-23-103, 63-23-108, and 63-23-109.

Rule 1365-1-.19, Board Meetings, Officers, Consultant, and Records, is amended by deleting paragraph (1) and subparagraph (3) (c) in their entirety and renumbering the remaining paragraphs and subparagraph, as applicable, accordingly.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-23-101, and 63-23-108.

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of February, 2003. (02-01)

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pg. 72



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 February 3, 2003 and ending February 28, 2003.


RILEY C. DARNELL
Secretary of State

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pg. 74

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pg. 76

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