



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

June 3, 2002

Mr. Dennis Sollenberger
United States Nuclear Regulatory Commission
Office of State and Tribal Programs
One White Flint North
11555 Rockville Pike, 3rd Floor
Rockville, MD 20852

02 JUN 11 AM 10:27
STP

Dear Dennis:

Attached is a copy of the Division's revised "Development, Tracking and Adoption of Rules" process. We believe this process, in conjunction with the Tracking Document, will greatly improve management's awareness of the progress as rules make their way through the State system.

Also attached is a copy of a memo sent to Division staff by Barbara Davis. While trying to prepare copies of our amendments to the regulations that we believed were in effect on February 3, 2002, we learned that the rules were not effective. The Secretary of State's office had no record of having received these rules. We learned from the Attorney General's office that the same thing had happened to a set of rules that another state agency had delivered to the Secretary of State's office. We resolved this issue and the rules became effective April 18, 2002 as Public Necessity Rules. The attorneys also recommended a change in our procedures to ensure a record of delivery to the Secretary of State's office. This change was incorporated in IV.(4) (b). A copy of the Statement of Public Necessity is attached, also.

If you have any questions, please contact me at (615)532-0426.

Sincerely,

Debra G. Shults

Debra G. Shults
Deputy Director
Division of Radiological Health
L&C Annex, 3rd Floor
401 Church Street
Nashville, TN 27243-1532

STP-DD6 *Template*
RIDS DIST. SP06

DEVELOPMENT, TRACKING AND ADOPTION OF RULES

(revised 31 May 2002 from "Regulation Adoption Process")

- I. When a *proposed* rule is received:
 - (1) Route a copy to Central Office Managers, Field Office Managers and any others whose work areas are directly affected, requesting comments.
 - (2) Within approximately two weeks of routing the copies, schedule a meeting among all who were to review the proposed rule to discuss and collate comments.
 - (3) Send comments that were generated or a statement of "No Comments" to the appropriate person in NRC.
- II. Maintain a tracking log of the progress of a rulemaking (see Attachment 1) and a list of those persons who have requested to be kept informed of rulemakings.
- III. When a *final* rule is received, and:
 - (1) It is a compatible matter:
 - (a) Write into our format as soon as possible.
 - (b) Send a copy to the Liaison Committee President stating that it is a matter of compatibility. Informal comments are not requested for a compatibility matter. Log the date.
 - (c) Start it through the appropriate approval process.
 - (2) It is not a compatible matter:
 - (a) Determine if it is to be made a part of SRPAR, if not determined above at I(2). If not to be a part of SRPAR, there is no further action.
 - (b) If to be included in SRPAR, write it into our format.
 - (c) Send a copy for *informal comment* to the Liaison Committee President, other persons who have requested to be kept informed, and to other selected persons who potentially will be affected. Log the date.
 - (d) Review comments received and make corrections as deemed appropriate.
 - (e) Start it through the appropriate approval process.
- IV. Rule Adoption Process:
 - (1) Determine if adoption process is to be as a Rulemaking Hearing Rule, Proposed Rule, Emergency Rule or Public Necessity Rule. A Rulemaking Hearing Rule is a permanent rule and the procedure requires a public hearing. The procedures for Proposed, Emergency and Public Necessity Rules do not require a public hearing. However, when finalized, a Proposed Rule is a permanent rule. An Emergency Rule or a Public Necessity Rule must meet certain criteria and may remain effective for only 165 days. If

there is to be a permanent rule replacing an Emergency or Public Necessity Rule, the 165 days is used to get it through the system.

- (2) If a Rule is to be handled as a Proposed Rule, Emergency Rule, or Public Necessity Rule, prepare following the Secretary of State's style and format rules; see Attachments 2, 3 and 4, respectively, for wording. As no public hearing is required, skip to (4) below.
- (3) For rules handled as Rulemaking Hearing Rules:
 - (a) Determine Public Hearing date, keeping in mind scheduling requirements for publication in TAR, review by Attorneys, etc. The hearing date cannot be less than 45 days after the first day of the month in which the notice is published in TAR.
 - (b) Reserve hearing room.
 - (c) Prepare the Notice of Rulemaking Hearing including the required introductory wording (see Attachment 5) and following the Secretary of State's style and format rules. Prepare diskettes of the notice for the Secretary of State (SOS). If rules are 25 or more pages long, also prepare a summary of the rules for publication in the TAR. Get notarized signature of Division Director. File in SOS's office before the 28th of month for publication in the next month's TAR. Log date filed and TAR publication date.
 - (d) Send copy to Department's Public Information Officer to announce Public Hearing to the Media. Send electronic copy to Department's web page manager to include on Department's web page. Log dates.
 - (e) Prepare copies and send to those who have requested to be kept informed of rulemakings. Log dates.
 - (f) Hold Public Hearing and record proceedings. Log date.
 - (g) Make necessary changes generated at hearing (and usually a 10 day/2 week period after hearing to allow written comments).
 - (h) Draft responses to comments received for Director's signature. Log date.
 - (i) Prepare the Rulemaking Hearing Rule following Secretary of State's style and format rules; see Attachment 6 for wording.
- (4) For all rulemakings:
 - (a) Prepare the following copies:
 1. One copy to route to OGC for their comments and/or concurrence following changes made following the public hearing. Also include an unsigned signature page, the "Rule Summary and Regulatory Impact Statement" (see Attachment 7) and the blue OGC routing sheet (Attachment 8). Log date.
 2. One copy of the rules to send to the Agreement States Representative, Region II of NRC, Atlanta, for their review. Use format required by NRC. Only if substantial changes are made will they be sent another copy. Log date.
 3. One copy of the rules to send to the Liaison Committee President. Log date.

- (b) Following return of the copy in (4)(a)1. from OGC, prepare six (6) original copies (last page of each is a signature page and has original signatures of Division Director and other person(s) who drafted the rules) of rules incorporating changes suggested by OGC and return to OGC. One original copy will be retained by the Attorney General's Office, the Secretary of State requires four (4) original copies and one original copy will be returned to the Department. Prepare diskette copies of the rules and of the affected chapters as amended for the Secretary of State. Log date. Also prepare one xerox copy, label it as "For Secretary of State's date stamp," and request OGC to have this copy date stamped when the original copies are submitted to the SOS.
- (c) If all goes well, DRH is finished until a notice is received that the rules have been filed in Secretary of State's Office and will become final on a specified date. Log these two dates. There are no time constraints as to how long this will take. Rules can bounce back and forth several times as they work their way through the Department's OGC and Attorney General's Office. Our stating a priority on the blue routing sheet to OGC is the only formal handle we have on time.

V. After receipt of notice that rules are filed in the Secretary of State's Office and the date they become final, two actions remain in which DRH is involved.

- (1) Appearance before the Government Operations Committee (GOC) of the legislature whenever the GOC schedules the rules on their Agenda. The OGC Attorney represents us at this meeting and our presence is usually for technical assistance to the Attorney.
- (2) Preparation of pages, printing and mailing the adopted rules to licensees and/or registrants.

DGS/jhg 5-02

Attachment 1

*DRH Tracking of Proposed Rules [P], Rulemaking Hearing Rules [R],
Public Necessity Rules [N], Emergency Rules [E]*

	Dates	Comments
amendment name		
type of rulemaking		
FR designator(s)		
SRPAR affected rule(s)		
copies provided		
to NRC		
hearing notice to SOS		
TAR publication data		
notice to Department		
public hearing		
responses to comments		
signed by LEN		
OGC case #		
signed by Commissioner		
signed by AG		
received by SOS		
effective date		

Attachment 2

Page 1 of 3 pages.

Proposed Rules
of the
Department of Environment and Conservation
Division of Construction Grants and Loans

Chapter 1200-22-7
Utility Management Review Board

Presented herein are proposed amendments of the Utility Management Review Board, Department of Environment and Conservation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Utility Management Review Board, Department of Environment and Conservation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department of Environment and Conservation, 8th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1533, and in the Department of State, 5th Floor, James K. Polk State Office Building, Sixth and Deaderick, Nashville, TN 37219-0130, 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 copies of the entire text of the proposed amendments, contact: Ron C. Taylor, Director Division of Construction Grants and Loans, Department of Environment and Conservation, 18th Fl., L&C Tower, 615-532-0987.

The text of the proposed amendments as follows:

Amendments

Rule 1200-22-7-.01 Introduction is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1200-22-7-.01 Introduction

- (1) The purpose of the creation of the Utility Management Review Board (amending Tennessee Code Annotated Title 7, Chapter 82) is advising utility district boards of commissioners in the area of utility management. This Board, provided for within the Department of Environment and Conservation by Executive Order, determines and ensures the financial integrity of certain facilities by effecting adequate user rates or system efficiencies, including negotiated consolidations of certain facilities. In carrying out the provisions of this part, the Board shall be deemed to be acting for the public welfare and in furtherance of the legislature's intent that utility districts be operated as self-sufficient enterprises.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708 and Executive Order Number 21 (dated June 28, 1988).

Subparagraph (c) of paragraph (1) of rule 1200-22-7-.02 Definitions is amended by deleting the current language in its entirety and submitting the following language so that as amended the subparagraph shall read:

- (c) "Commissioner" means the Commissioner of the Department of Environment and Conservation, or its successor in interest, or his designee.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708 and Executive Order Number 21 (dated June 28, 1988).

Part 1. of subparagraph (c) of paragraph (1) of rule 1200-22-7.03 Utility Management Review Board: Composition, Conflict of Interest is amended by deleting the current language in its entirety and substituting the following language so that as amended the part shall read:

- 1. Five (5) Board members shall constitute a quorum and a majority of those present and voting shall be required for a determination by the Board.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708.

Legal Contact and/or party who will approve final copy: _____

Contact for disk acquisition: _____

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Ron C. Taylor, Director
Division of Construction Grants and Loans

The roll-call vote by the (Department or Agency) on these rulemaking hearing rules was as follows:

	Aye	No	Absent
Bob Jones	<u>X</u>	___	___
Tom Kinnie	<u>X</u>	___	___
Serena Henson	___	___	<u>X</u>

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (Department or Agency) on the ___ day of _____, 19 ____.

Bob Jones
Chairman,
Tennessee Utility Management Review Board

The Secretary of State is hereby instructed that, in the absence of a petition for rulemaking hearing being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Ron C. Taylor, Director
Division of Construction Grants and Loans

Subscribed and sworn to before me this the ___ day of _____, 19 ____.

Notary Public

My commission expires on the ___ day of _____, 19 ____.

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Charles Burson
Attorney General and Reporter

The proposed rules set out herein were properly filed in the Department of State on the ___ day of _____, 19 ____ 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 ___ day of _____, 19 ____.

Riley C. Darnell
Secretary of State

By: _____ (Signature)

Emergency Rules
of the
Department of State - 1360
Division of Elections

Chapter 1360-2-16
Procedures for Preparing Lists of Those Individuals Who Vote Early

Statement of Necessity Requiring Emergency Rules

Pursuant to T.C.A. §4-5-208, I am promulgating emergency rules covering procedures for the printing of lists of those individuals voting during the early voting period. The emergency rules are necessary because of Chapter 859 of the Public Acts of 1994.

I have made a finding that there is an emergency creating a danger to the public welfare in that there will not be a set of procedures requiring the individual county election commissions, absent an emergency rule, to maintain a daily list of those participating in early voting, until permanent rules are promulgated by the Coordinator of Elections as required by said Chapter of the Public Acts of 1994. Therefore, unless emergency rules establishing procedures requiring this record-keeping process are adopted, there would be no state regulations regarding this security measure. The lack of such guidelines would be injurious to the security of the ballot and the ease of operation of the upcoming elections in Tennessee.

For copies of the entire text of the proposed amendments, contact: Roger Shaver, Administrative Assistant, Division of Elections, Department of State, 5th Fl., James K. Polk Bldg., 615-741-5659.

Will Burns
Coordinator of Elections
State of Tennessee

Chapter 1360-2-16
Procedures for Preparing Lists of Those Individuals Who Vote Early

Table of Contents

1360-2-16-01	Adoption and Promulgation
1360-2-16-02	Intent of Regulations
1360-2-16-03	Preparation of Lists of Early Voters
1360-2-16-04	Submission Newspapers
1360-2-16-05	Availability of Lists to Candidates

1360-2-16-01 Adoption and Promulgation.

- (1) The following rules and regulations for compiling lists of voters who vote early are adopted and promulgated by the Coordinator of Elections of the State of Tennessee and approved by the Tennessee Secretary of State under the authority of T.C.A. § 2-11-201(c).

1360-2-16-02 Intent of Regulations.

- (1) It is the intent of these regulations to provide procedures by which county election commissions will supplement statutory requirements to compile lists of individuals who participate in early voting to help insure that the integrity of the early voting process is above reproach in both perception and in fact.

1360-2-16-.03 Preparation of Lists of Early Voters.

- (1) Each county election commission shall prepare, for each day of the early voting period, a list of all persons who voted on the previous day. This list shall include ballots received by mail during the previous day.

1360-2-16-.04 Submission to Newspapers.

- (1) The list described in 1360-2-16-.03 shall be provided to a newspaper of general circulation as that term is defined at T.C.A. §2-1-104(a)(12) so that the paper may publish the information if it so chooses, The list shall also be provided to any other publication requesting it.

1360-2-16-.05 Availability of Lists to Candidates.

- (1) Under open records laws of the State of Tennessee these lists are open for inspection to any citizen of the state. In addition, if requested by a person who is a candidate in the election in which early voting is being conducted, a copy of the list shall be mailed to that candidate on a daily basis at an address he or she provides to the county election commission. The county election commission may charge a reasonable cost for production of this list not to exceed the cost of producing the list.

Authority: T. C. A. §2-11-201(c).

Legal Contact and/or party who will approve final copy: _____ (Name) _____
 _____ (Address) _____
 _____ (Telephone) _____

Contact for disk acquisition: _____ (Name) _____
 _____ (Address) _____
 _____ (Telephone) _____

I certify that this is an accurate and complete copy of emergency rules lawfully promulgated and adopted by the (department or agency) on the ___ day of _____, 19 ____.

Riley C. Darnell
 Secretary of State

Subscribed and sworn to before me this the ___ day of _____, 19 ____.

(Notary Public)

My commission expires on the ___ day of _____, 19 ____.

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Charles Burson
Attorney General and Reporter

The emergency rules set out herein were properly filed in the Department of State on the ___ day of _____, 19____, and will be effective from the date of filing for a period of ____ days. These emergency rules will remain in effect through the day of ___ day of _____, 19 ____.

Riley C. Darnell
Secretary of State

By: _____

Public Necessity Rules
of the
Department of Human Services
Child Support Services Division

Statement of Necessity Requiring Public Necessity Rules

Pursuant to federal regulations and Public Chapter 987 (1994) certain changes are required to be made to state law regarding Income Assignment. Specifically, changes to T.C.A. §36-5-501 requires an employer to allocate income amounts so that all families receive a share of the obligor's income. This change requires that the Income Assignment forms must be altered to reflect this change. The Legislature mandated that the Department of Human Services shall have authority to establish rules, forms, and any necessary standards and procedures to implement income assignments, and shall, notwithstanding the provisions of T.C.A. §36-5-502, implement such forms and rules by public necessity rules to be effective July 1, 1994.

For complete copies of the text of the notice, please contact William Russell, Department of Human Services, 15th Floor, Citizen's Plaza, 400 Deaderick Street, Nashville, TN 37243, telephone 615-532-0600.

Robert A. Grunow,
Commissioner
TN Department
of Human Services

Public Necessity Rules
of the
Department of Human Services
Child Support Services Division

Chapter 1240-2-2
Forms for Income Assignments

Repeals

Chapter 1240-2-2 Forms for Income Assignments is repealed in its entirety.

Authority: T.C.A. §§71-1-105(12), 71-3-501 et seq.

Legal Contact and/or party who will approve final copy: _____ (Name) _____
_____(Address) _____
_____(Telephone) _____

Contact for disk acquisition: _____ (Name) _____
_____(Address) _____
_____(Telephone) _____

I certify that this is an accurate and complete copy of public necessity rules lawfully promulgated and adopted by the (department or agency) on the ___ day of _____, 19 ____.

William Russell
General Counsel
Department of Human Services

Subscribed and sworn to before me this the ___ day of _____, 19 ____.

(Notary Public)

My commission expires on the ___ day of _____, 19 ____.

All public necessity rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Charles Burson
Attorney General and Reporter

The public necessity rules set out herein were properly filed in the Department of State on the ____ day of _____, 19 ____ , and will be effective from the date of filing for a period of ____ days. These emergency rules will remain in effect through the day of ____ day of _____, 19 ____ .

Riley C. Darnell
Secretary of State

By: _____

Notice
of Rulemaking Hearing
Department of Environment and Conservation
Division of Air Pollution Control

The Tennessee Air Pollution Control Board will hold a public hearing to receive comments concerning amendments to the State Implementation Plan pursuant to T.C.A. §68-201-105. This hearing will be conducted as prescribed by Uniform Administrative Procedures Act T.C.A. §4-5-201 et. seq., and will take place in the 9th Floor Conference Room at the L & C Annex, 401 Church Street, Nashville, TN 37243-1531 at 9:30 A.M. CDT on October 19, 1994.

Written comments will be considered if received by close of business, October 19, 1994, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means, and should be made no less than ten days prior to (October 19, 1994) 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)

For complete copies of the text of the notice, please contact Malcolm Butler, Department of Environment and Conservation, 11th Floor, L & C Tower, 401 church Street. Nashville, TN 37243, telephone 615-532-0600.

Substance of Proposed Rules

Chapter 1200-3-27
Nitrogen Oxides

Paragraph (6) of rule 1200-3-27-.02, General Provisions and Applicability is amended by adding to the end of the first sentence the words "and VOC emissions.", so that as amended the paragraph shall read:

- (6) The owner or operator of any facility in Davidson, Rutherford, Shelby, Sumner, Williamson, or Wilson County which has actual emissions from stationary sources of 25 tons or more nitrogen oxides during a calendar year shall report to the Technical Secretary information and data concerning these emissions and VOC emissions. This information and data shall be in the form prescribed by the Technical Secretary, and shall be submitted before March 31 of the year following the calendar year for which the information and data is reported. The first report shall be for the 1993 calendar year, and shall be submitted before March 31, 1994. Each report shall be certified by an official of the company. Records must be kept by the facility, and maintained for a period of 3 years, documenting the information and data in each report.

Authority: T.C.A. §§68-25-105 and 4-5-201 et. seq..

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Environment and Conservation.

John W. Walton
Technical Secretary
Air Pollution Control Board

Subscribed and sworn to before me this the ____ day of _____, 19 ____.

Notary Public

My commission expires on the ____ day of _____, 19 ____.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 19 ____.

Riley C. Darnell
Secretary of State

By: _____

Attachment 6

APPENDIX B

Page 1 of 3 pages.

Rulemaking Hearing Rules
of the
Board of Accountancy

Chapter 0020-5
Educational and Experience Requirements

New Rules

Table of Contents

0020-5-.01 Education
0020-5-.02 Experience

0020-5-.01 Education

(1) C.P.A. Candidates. For the purposes of T.C.A. §62-1-108(c), a baccalaureate degree with a non-accounting major will be deemed to be substantially equivalent to a baccalaureate degree with a major in accounting if the holder of such degree has earned at a recognized college or university which awards a baccalaureate degree with a major in accounting:

(a) a minimum of 24 semester hour credits (or 36 quarter hour credits) in one or more of the following accounting subjects:

1. Principles of Accounting.
2. Financial Accounting:
 - (i) financial reporting theory;
 - (ii) applied financial accounting problems;
 - (iii) contemporary financial accounting issues.
3. Cost Accounting:
 - (i) cost determination and analysis;
 - (ii) cost control;
 - (iii) cost-based decision-making.
4. Taxes:
 - (i) tax theory and consideration;
 - (ii) tax problems.

5. Auditing:

- (i) audit theory and philosophy;
- (ii) audit problems.

Authority: T.C.A. §62-1-111(a)(10).

Legal Contact and/or party who will approve final copy: _____

Contact for disk acquisition: _____

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

 Thad Watkins
 Staff Attorney
 Department of Insurance

The roll-call vote by the (Department or Agency) on these rulemaking hearing rules was as follows:

	Aye	No	Abstain
Vicki W. Dunn	<u>X</u>	—	—
Herbert W. Hoover	<u>X</u>	—	—
James S. Lattimore, Jr	—	—	<u>X</u>
Frank E. Outhier	<u>X</u>	—	—

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the (Department or Agency) on the ___ day of _____, 19 ____.

Further, I certify that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the ___ day of _____, 19 ____ and such notice of rulemaking hearing having been published in the _____, 19 ____ issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the ___ day of _____, 19 ____.

Thad Watkins
Staff Attorney
Department of Insurance

Subscribed and sworn to before me this the ___ day of _____, 19 ____.

Notary Public

My commission expires on the ___ day of _____, 19 ____.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Charles Burson
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the ___ day of _____, 19 ____ and will become effective on the ___ day of _____, 19 ____.

Riley C. Darnell
Secretary of State

By: _____

Attachment 7

Regulation Summary and Fiscal Impact Statement

Proposed Rules
Department of Environment and Conservation
Division of Radiological Health
Chapter 1200-2-
State Regulations for Protection Against Radiation (SRPAR)

Amendment

- (1) Rule Summary:
- (2) Statutory/Regulatory Authorization: This rulemaking authority is provided in [citations as appropriate, such as] T.C.A. Section 4-5-201 *et seq.*, 68-202-201 *et seq.* and 68-202-501 *et seq.*
- (3) Persons Affected:
- (4) Related Attorney General Opinion/Judicial Rulings:
- (5) Fiscal Impact:
- (6) Agency Contacts: In the Office of General Counsel (532-0131) – [usually] Alan Leiserson
- (7) Person or persons who will explain the rule at the scheduled meeting of the Government Operations Committee: [usually] Alan Leiserson, Office of General Counsel.
- (8) Office address and telephone number of agency representative:

Alan Leiserson [usually]
Office of the General Counsel
William R. Snodgrass Building, 25th Floor SW
312 Eighth Avenue North
Nashville, TN 37243-1548
615-532-0131
- (9) Any additional information relevant to the rule proposed for continuation which the committee requests:

DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL
CASE TRACKING SYSTEM
REQUEST FOR LEGAL ACTION

PROGRAM INFORMATION

Program Case No.	_____	Program Area	_____
Permit/License No.	_____	County ID	_____
Claims Comm. No.	_____	Priority	_____
Rule No.	_____	Party Type	_____
Program Contact	_____	Date of Accident	_____
Bureau	_____	Date of Request	_____
		Claim Request	_____
		Damages	_____
		Civil Penalty	_____
		Total Dollars	_____

ASSIGNMENT

Complete Case Name: _____

Case Name (Short Form, if applicable): _____

Case No.	_____	Date Received by OGC	_____
Docket No.	_____	Attorney Assigned	_____
Type Action	_____	Complexity	_____

COMMENTS

TABLE OF ACTION TYPES

- | | |
|------------------------------|--------------------------------|
| 1. Board of Claims | 12. Garnishment |
| 2. Bond Collection | 13. Grievance |
| 3. Bond Forfeiture | 14. Judicial |
| 4. Citizen Complaint | 15. Legal Opinion |
| 5. Civil Penalty Collection | 16. Legislation Review |
| 6. Claims Commission | 17. Miscellaneous Fair Hearing |
| 7. Contract/RFP Review | 18. Permit/License Appeal |
| 8. Declaratory Order | 19. Permit/License Revocation |
| 9. EEOC Complaint | 20. Rule Review |
| 10. Enforcement | 21. Termination of Contract |
| 11. Environmental Delegation | 22. Other |

Public Necessity Rules
of the
Department of Environment and Conservation
Division of Radiological Health

Statement of Necessity Requiring Public Necessity Rules

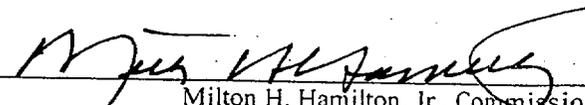
The State of Tennessee, Department of Environment and Conservation, Division of Radiological Health, is an Agreement State program statutorily authorized for the regulation of radioactive materials under the terms of an agreement between Tennessee and the U.S. Nuclear Regulatory Commission (NRC). Under the agreement, the NRC requires Tennessee to amend its rules and regulations so that Tennessee's program remains adequate and compatible with the NRC. Failure to maintain an adequate and compatible status may result in termination or suspension by the NRC of the Agreement State program authorization.

During its last review of the Tennessee program in August 2000, NRC identified changes that Tennessee needed in its regulations. The Management Review Board of the NRC met in November 2000, found the program to be adequate but not compatible, and placed the program under heightened oversight. The NRC required bi-monthly telephone reports and also conducted an on-site follow-up review in October 2001.

The Division developed these amendments to address the changes that are required for a finding of adequate and compatible. It put the amendments out for comments, conducted a public hearing on April 23, 2001, and twice submitted the amendments to the NRC for its review. The Division filed the amendments as a rulemaking hearing rule in the Secretary of State's Office on November 21, 2001, and notified the NRC of this. At its meeting in January 2002, the Management Review Board gave the Tennessee program a provisional status of adequate and compatible, based on the Division's statement that the amendments were in their 75 day waiting period and would be effective February 4, 2002.

The process of reviewing the amendments for inclusion in the Secretary of State's official compilation necessitated the amendments' being returned by the Secretary of State's Office to the Division and then by the Division to the Secretary of State's Office. During these transfers, the amendment was lost. This loss was not realized until April 3, 2002.

Tennessee's rules and regulations, and, hence, its regulatory program, would not have been found by NRC to be compatible, and probably not adequate, absent the effectiveness of these amendments. To avoid possible withdrawal of the Agreement State program authorization, the Division of Radiological Health is adopting these amendments as a public necessity rulemaking, as provided for in T.C.A. 4-5-209(a)(3), concurrently with refiling as a rulemaking hearing rulemaking. T.C.A. 4-5-209(a)(3) provides that a state agency may adopt a public necessity rule, "if the agency finds and files a written statement of reasons with the rule specifying that ... [i]t is required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedures described in this chapter might jeopardize the loss of a federal program or funds".


Milton H. Hamilton, Jr., Commissioner
Department of Environment and Conservation

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Debra Shults - status of the amendments needed for NRC compatibility

From: Barbara.A Davis
To: Allen Grewe; Billy Freeman; Charlie Arnott; Debra Shults; Eddie Nanney; John Politte; Johnny Graves; Mark Hammon; Mary.Helen Short; Roger Fenner; Roger Perry; Ruben Crosslin
Date: 5/20/02 2:12 PM
Subject: status of the amendments needed for NRC compatibility

Please distribute to your staff as you consider appropriate.

This e-mail should bring everyone up-to-date on the status of the amendments that the Division needed in order to receive a compatible rating from the last NRC IMPEP review.

These amendments became effective on 18 April 2002.

The amendments were delivered to the Secretary of State's Office at the end of November 2001 and should have become effective at the beginning of February 2002. This did not happen, however, because of a mix-up in the Secretary of State's Office. We realized, in April, that they had not shown up on the SOS' web-page, in the official compilation, and learned from the SOS that they were not in effect. This created difficult problems for the Division related to our, and the NRC's, expectation that they were effective in early February. Our attorneys advised resolving the problems with two replacement rulemakings:

- start over with a new rulemaking hearing procedure, including a new public hearing, and
- file the amendments immediately as public necessity rules.

Public necessity rules become effective immediately on being filed with the Secretary of State and may remain in effect for 165 days. Ours are effective from 18 April to 30 September. I've attached a copy of the "Statement of Necessity Requiring Public Necessity Rules" that we prepared as part of the process.

The 165 days allow us time to hold a new public hearing for permanent rules, which is scheduled for 17 June 2002 at 10:00 am in the 17th floor conference room.

The amendments in all these different rulemakings are the same.

Our attorneys also recommended a change in our procedure. There is no receipt given at the time we deliver things to the SOS; the SOS does sign the last (signature) page, but not until later. This is the SOS' procedure, it's not something we can change, and it was not a problem for us until now. However, in our discussions with the AG's office, one attorney we talked to was aware from his experience that this same situation had happened to another of the State agencies he works with. Now, the attorneys suggest that we prepare an extra copy of a submission and ask the SOS' Office to date stamp it. Although this date stamped copy is not an official copy, it will give a record that something was delivered on a specific date.