

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [sos.information@state.tn.us](mailto:sos.information@state.tn.us)

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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

**Agency/Board/Commission:** Department of Commerce and Insurance  
**Division:** Insurance  
**Contact Person:** Tony Greer, Assistant General Counsel  
**Address:** 500 James Robertson Parkway  
Davy Crockett Tower, 2<sup>nd</sup> Floor  
Nashville, Tennessee  
**Zip:** 37243  
**Phone:** 615-741-2199  
**Email:** [tony.greer@state.tn.us](mailto:tony.greer@state.tn.us)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
0780-01-70	Tennessee Charitable Gift Annuity Regulations
Rule Number	Rule Title
0780-01-70-01	Purpose
0780-01-70-02	Scope
0780-01-70-03	Authority
0780-01-70-04	Definitions
0780-01-70-05	Licensing Requirements
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Chapter 0780-01-70  
Tennessee Charitable Gift Annuities Regulations

New Rules

- 0780-01-70-.01 Purpose
- 0780-01-70-.02 Scope
- 0780-01-70-.03 Authority
- 0780-01-70-.04 Definitions
- 0780-01-70-.05 Licensing Requirements
- 0780-01-70-.06 Annual Reporting Requirements
- 0780-01-70-.07 Approval of Rates and Forms
- 0780-01-70-.08 Examination Authority and Record Keeping Requirements
- 0780-01-70-.09 Procedures for Public Complaints
- 0780-01-70-.10 Penalties
- 0780-01-70-.11 Severability

0780-01-70-.01 Purpose.

The purpose of this Chapter is to set standards to assist the commissioner of the Tennessee Department of Commerce and Insurance in administering the laws relating to the Tennessee Charitable Gift Annuity Act of 2008.

Authority: T.C.A. §§ 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

0780-01-70-.02 Scope.

This Chapter applies to all charitable organizations issuing charitable gift annuities in this State unless specifically exempted by the commissioner pursuant to T.C.A. § 56-52-104.

Authority: T.C.A. §§ 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

0780-01-70-.03 Authority.

This Chapter is issued pursuant to the authority vested in the commissioner pursuant to T.C.A. §§ 56-52-101 through 56-52-111.

Authority: T.C.A. §§ 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

0780-01-70-.04 Definitions.

- (1) "Annuity" means a contract or agreement, both with and without a life or mortality element, to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals;
- (2)
  - (a) "Charitable gift annuity" means a transfer of cash, securities, annuities or other property by a donor to a charitable organization in return for an annuity issued by a charitable organization;
  - (b) "Charitable gift annuity" does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments. "Charitable gift annuity" also does not mean any transfer of cash, securities, annuities or other property by a donor to a charitable organization in return for an annuity where a commission is paid to any person as a result of such transfer;
- (3) "Charitable gift annuity separate account" means any segregated account established by a charitable organization to which such organization allocates cash, securities, annuities or other

property transferred by a donor to such organization that are to be applied to the terms of a charitable gift annuity issued in connection with such transfer to fund benefits under such charitable gift annuity;

- (4) "Charitable organization" means an entity described by:
  - (a) Section 501(c)(3) Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or
  - (b) Section 170(c), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c));
- (5) "Commissioner" means the commissioner of the Tennessee Department of Commerce and Insurance;
- (6) "Department" means the Tennessee Department of Commerce and Insurance;
- (7) "NAIC" means the National Association of Insurance Commissioners;
- (8) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association, trust or corporation; and
- (9) "Uniform Administrative Procedures Act" means the act compiled in T.C.A. §§ 4-5-101, et seq.

Authority: T.C.A. §§ 4-5-101, et seq., 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

#### 0780-01-70-.05 Licensing Requirements.

- (1) The following items are required to be submitted for the initial registration of any person wishing to apply for a certificate of authority to issue charitable gift annuities:
  - (a) A completed application form adopted for use by the commissioner verified by two (2) of the charitable organization's principal officers;
  - (b) A statement that the charitable organization maintains a charitable gift annuity separate account, invested in accordance with the prudent investor standard as set forth in the Tennessee Uniform Prudent Investor Act, that equals either the total amount of donations for outstanding charitable gift annuities to which the account applies or one hundred ten percent (110%) of the reserves calculated in a manner consistent with T.C.A. § 56-52-104(b). In meeting the charitable gift annuity separate account reserve requirement, either by holding the total amount of donations or one hundred ten percent (110%) of the reserves, a charitable organization shall maintain a segregated account for the payment of charitable gift annuities issued in this State on or after January 1, 2009. If the charitable organization maintains a charitable gift annuity separate account that equals one hundred ten percent (110%) of the reserves, the charitable organization must also submit an actuarial opinion;
  - (c) A statement certifying that the charitable organization does not use persons that receive commissions for the sale, solicitation or negotiation of charitable gift annuities;
  - (d) A certificate from the Internal Revenue Service stating that the charity qualifies as an organization described in sections 501 (c)(3) and 170(c)(2) of the Internal Revenue Code of 1986;
  - (e) Financial statement as of the end of the charitable organization's previous fiscal year that includes contact information for the charitable organization and has been attested to by two (2) principal officers or has been audited by an independent qualified certified public accountant; and
  - (f) A fee in the amount of six hundred and seventy-five dollars (\$675) or in an amount otherwise specified in T.C.A. § 56-4-101(a)(1).

- (2) The commissioner may, after receiving an application under this Paragraph, request from a charitable organization additional information as deemed necessary or appropriate in reviewing such application.
- (3) If the commissioner finds that the applicant is in sound financial condition and is otherwise qualified, the commissioner shall issue to the applicant a certificate of authority. If the commissioner does not so find, the commissioner shall deny issuance of the certificate of authority and notify the applicant in writing stating the reasons.
- (4) For matters pertaining to the issuance of charitable gift annuities, the charitable organization must appoint the commissioner as attorney to receive service of lawful process in any action, suit, or proceeding in any court. This appointment is irrevocable, and binds the charitable organization and any successor in interest, and shall remain in effect so long as there is in force in Tennessee any contract made or issued by the charitable organization, or any obligation arising therefrom.
- (5) Unless directed otherwise by the Commissioner, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Fourth Floor, Nashville, Tennessee 37243, Attention: Charitable Gift Annuity Specialist.

Authority: T.C.A. §§ 56-4-101, 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

#### 0780-01-70-.06 Annual Reporting Requirements.

- (1) A charitable organization authorized under this Chapter shall annually file a report verified by at least two (2) principal officers with the commissioner covering the preceding fiscal year. The report is due ninety (90) days after the close of the charitable organization's fiscal year or at a later date approved by the commissioner. In lieu of a verified report, a charitable organization may submit a report that has been audited by an independent qualified certified public accountant within one hundred and fifty (150) days after the close of the charity's fiscal year.
- (2) All charitable organizations maintaining a charitable gift annuity separate account that equals one hundred ten percent (110%) of the reserves must annually submit an actuarial opinion prepared by a qualified actuary concurrently with either the verified report or the audited report.
- (3) All charitable organizations licensed pursuant to this Chapter must use either the annual report form adopted by the commissioner or the state of domicile of the charitable organization if that report contains substantially the same information as the report required by Title 56, Chapter 52. The annual report form adopted by the commissioner shall be made available to each charitable organization upon request.
- (4) In addition to the form required by this Rule, all charitable organizations licensed pursuant to this Chapter must submit an annual continuance fee in the amount of one hundred dollars (\$100.00) by March 1.

Authority: T.C.A. §§ 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

#### 0780-01-70-.07 Approval of Rates and Forms.

- (1) No form of a charitable gift annuity shall be issued in this state without the approval of the commissioner.
- (2) Each annuity agreement form shall include the following information:
  - (a) The value of the property to be transferred;
  - (b) The amount of the annuity, calculated pursuant to the suggested charitable gift annuity rates approved by the American Counsel on Gift Annuities or such other methodology

- approved by the Commissioner, to be paid to the donor or other annuitant;
- (c) The manner in which and the intervals at which payment is to be made;
  - (d) The age and sex of the person or persons during whose life payment is to be made (use of the date of birth and gender specific pronouns are acceptable);
  - (e) The reasonable value as of the date of the agreement of the benefits created as calculated using methodology approved by the Internal Revenue Service (the annuity agreement need not state the methodology being used, simply the figure derived by the methodology); and
  - (f) The date the payments are to begin.
- (3) All requests for approval under this Paragraph shall be filed with the commissioner no later than thirty (30) days prior to the proposed date of offering of the charitable gift annuity by a charitable organization.
  - (4) The commissioner may, after receiving a request for approval, request from a charitable organization additional information as deemed necessary or appropriate in reviewing such request.
  - (5) Upon receiving a request for approval containing all of the information required by Rule 0780-1-70-.07(2), and receiving all information requested pursuant to Rule 0780-1-70-.07(3), the commissioner shall issue the requesting party in writing a notice of approval or denial of the request.
  - (6) A charitable organization shall not offer in this State a charitable gift annuity without approval of the commissioner. Notwithstanding the foregoing, if the commissioner does not deny a request for approval within thirty (30) days of having received all requested information under this rule, the request for approval shall be deemed to have been approved by the commissioner.

Authority: T.C.A. §§ 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

0780-01-70-.08 Examination Authority and Record Keeping Requirements.

- (1) The commissioner has the authority to examine such charitable organizations' assets, liabilities and other affairs as they pertain to charitable gift annuity agreements entered into pursuant to Title 56, Chapter 52 and this Chapter in determining whether such charitable organizations are in compliance with the laws or regulations applicable to them. Reasonable expenses of such examinations shall be assessed against the charitable organization.
- (2) The commissioner has the authority to investigate the affairs of any person acting as a charitable organization in this State in order to determine whether such person is in violation of this Title 56, Chapter 52 and this Chapter.
- (3) Each charitable organization shall maintain its accounts, books and records in a form and manner approved by the commissioner for a period of not less than five (5) years.
- (4) All charitable organizations licensed under this Chapter 56, Title 52 and this Chapter must maintain a copy of the signed statement as required by T.C.A. § 56-52-109 for the life of the charitable gift annuity.
- (5) All examinations shall be conducted pursuant to T.C.A. § 56-1-411. Once the examination report is completed and the rebuttal period has expired, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order:

- (a) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation;
  - (b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to T.C.A. § 56-1-411(c)(2); or
  - (c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.
- (6) If the examination reveals that the company is operating in violation of any law, regulation or prior order, the commissioner in such written order may require the company to take any action the commissioner considers necessary or appropriate in accordance with the report of examination or the hearing, if any, on such. That order shall be subject to judicial review in accordance with the provisions of title 27, chapter 9.
- (7) Nothing contained in this Title 56, Chapter 52 and this Chapter shall prevent or be construed as prohibiting the commissioner from disclosing the examination report after an order adopting an examination report has been entered. The confidentiality and privileges provisions found in T.C.A. §§ 56-1-411 and 56-8-107 shall also apply.

Authority: T.C.A. §§ 56-1-411, 56-8-107, 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

0780-01-70-.09 Procedures for Public Complaints.

- (1) Complaints concerning charitable organizations regulated under Title 56, Chapter 52 and this Chapter or other applicable insurance law shall be handled by the Consumer Insurance Services Section (or successor organizational unit) of the Department's Insurance Division.
- (2) The Consumer Insurance Services Section (or successor organizational unit) shall record and review all complaints received under this Rule, and the process for such review and disposition shall be the same as that for all other complaints submitted to the Consumer Insurance Services Section.
- (3) Upon receiving notice of a complaint from the Consumer Insurance Services Section, a charitable organization licensed under this Chapter shall send a written response to the Consumer Insurance Services Section within thirty (30) days thereafter.

Authority: T.C.A. §§ 56-8-107, 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

0780-01-70-.10 Penalties.

- (1) In addition to any other reason set forth in statute, the commissioner may deny, suspend or revoke the certificate of authority of any charitable organization upon finding that:
  - (a) The charitable organization has failed to provide any information required for a certificate of authority under this Chapter;
  - (b) The charitable organization is violating any of the provisions of Title 56, Chapter 52 and this Chapter or any other law or regulation applicable to it;
  - (c) The charitable organization is not fulfilling its contractual obligations under the charitable gift annuity;
  - (d) The charitable organization is in unsound financial condition and is now or would become

reasonably unable to make the payments that it contracts for in the charitable gift annuities issued in this state or another state;

- (e) The charitable gift organization fails to maintain separate assets for its charitable gift annuities in conformity with the prudent investor standard as set forth in the Tennessee Uniform Prudent Investor Act of 2002, compiled in T.C.A. §§ 35-14-101, et seq.; or
  - (f) The charitable organization is conducting business in a deceptive, untrustworthy or fraudulent manner, which includes using persons who receive commissions for the sale, solicitation or negotiation of charitable gift annuities on behalf of the charitable organization.
- (2) All hearings to revoke or suspend a certificate of authority under this Rule shall be held in conformity with the Uniform Administrative Procedures Act and the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-4-1.

Authority: T.C.A. §§ 35-14-101 through 114, 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 831.

#### 0780-01-70-.11 Severability Provision

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this chapter are declared severable.

Authority: T.C.A. §§ 56-52-101 through 56-52-111 and 2008 Public Acts, Chapter 83.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
n/a					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 4/28/09 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/27/09

Notice published in the Tennessee Administrative Register on: 03/13/09

Rulemaking Hearing(s) Conducted on: (add more dates). 04/16/09



Date: 4/28/09

Signature: Leslie A. Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 4/28/09

Notary Public Signature: Denise M. Lewis

My commission expires on: 3/5/12

My Commission Expires MAR

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.

RE Cooper  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
4-29-09  
 Date

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Filed with the Department of State on: 5/5/09

Effective on: 7/19/09  
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4/13  
M. Lewis

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### **Comment 1**

0780-01-70-.05(1)(b)

It was suggested that, pursuant to the reserving requirements, it should be specified that use of the Tennessee standard valuation methodology, or a valuation methodology specifically required by another state for calculating gift annuity reserves would be acceptable.

### ***Agency Response to Comment 1***

The Department does not believe it has the statutory authority to make the suggested change. T.C.A. § 56-52-104(b)(1) states that the reserves on outstanding charitable gift annuities shall not be less than reserves calculated using: 1) the annuity reserve valuation method as defined in standard valuation law of the charitable organization's domestic state; 2) any mortality table permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of annuities issued during the same year as the charitable gift annuity; and, 3) the maximum interest rate permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same year as the charitable gift annuity. As such, the Department disagrees with the comment.

### **Comment 2**

0780-01-70-.05(1)(b)

It was suggested that the Commissioner shall waive the requirement for the charitable organization to submit an actuarial opinion if the charitable organization demonstrates to the satisfaction of the Commissioner that it has the appropriate software and technical expertise to calculate the required reserves, and that waiving this requirement would not be hazardous to the operations of the segregated account.

### ***Agency Response to Comment 2***

The Department disagrees with this comment and believes that it is necessary for charitable organizations that maintain one hundred ten percent (110%) of calculated reserves to submit an annual actuarial opinion. The Department believes that it would be hazardous to the owners of charitable gift annuities to allow a charitable organization to maintain one hundred ten percent (110%) of calculated reserves without requiring the charitable organization to file an annual actuarial opinion.

### **Comment 3**

0780-01-70-.05(1)(b)

It was suggested that in meeting the reserve requirement, either by holding the total amount of donations or one hundred ten percent of calculated reserves, a charity may elect to maintain a segregated account just for its Tennessee gift annuities issued on or after January 1, 2009.

### ***Agency Response to Comment 3***

The Department agrees with this comment and has made the appropriate change.

### **Comment 4**

0780-01-70-.07(2)(d)

It was suggested that the use of the date of birth and gender-specific pronouns are acceptable when including in the charitable annuity agreement the age and sex of the annuitant.

***Agency Response to Comment 4***

The Department agrees with this comment and has made the appropriate change.

**Comment 5**

0780-01-70-.07(2)(e)

It was suggested that the annuity agreement need not state the methodology being used, simply the figure derived by the methodology when determining the reasonable value, as of the charitable gift annuity is entered into, of the benefits created as calculated using methodology approved by the IRS.

***Agency Response to Comment 5***

The Department agrees with this comment and has made the appropriate change.

## Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed new rule in this rulemaking hearing rule is such that they will have an economic impact on small business (business with fifty (50) or fewer employees). The proposed new rule is not anticipated to have a significant economic impact affecting small businesses. The new rule that the Division is proposing will establish specific guidelines for how charitable organizations issuing charitable annuities must comply with Public Acts 2008, Ch. 831. This proposed new rule is necessary to comply with the Tennessee Charitable Gift Annuity act of 2008, as found in Tenn. Code Ann. § 56-52-101 et seq., which became effective January 1, 2009.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) These proposed amendments will apply to all small businesses that are subject to regulation as charitable organizations that issue charitable gift annuities as found in Title 56, Chapter 52 of the Tennessee Code Annotated.
- (2) The new rule that the Division is proposing will establish specific guidelines for how charitable organizations issuing charitable annuities must comply with Public Acts 2008, Ch. 831. These new rules instruct charitable organizations on how to apply for and renew licenses and how to comply with the annual reporting requirements. They state the Commissioner's examination authority and provide for penalties for violations of the Tennessee Charitable Gift Annuity Act of 2008. Finally, they instruct charitable organizations on how to properly reserve of the outstanding charitable gift annuities.
- (3) The effect on small businesses is negligible. The proposed new rule does not place any requirements on charitable organizations that are not included in the statute. The fees for licensing and license renewal are set by T.C.A. § 56-52-103.
- (4) There are no alternative methods to eliminate the rules and language in conflict with existing state law.
- (5) Florida, New York, New Jersey, Washington and Wisconsin have similar law and rules regarding the licensing of charitable organizations that sell charitable gift annuities.
- (6) Exempting small business, that are subject to regulation as charitable organizations issuing charitable gift annuities by the Department of Commerce and Insurance, would have the effect of eliminating small businesses from the licensing and enforcement program for charitable gift annuities issued in this State enacted by the general assembly in T.C.A. § 56-52-101 through 56-52-111.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rule that the Division is proposing will establish specific guidelines for how charitable organizations issuing charitable annuities must comply with Public Acts 2008, Ch. 831. These rules instruct charitable organizations on how to apply for and renew licenses and how to comply with the annual reporting requirements. They state the Commissioner's examination authority and provide for penalties for violations of the Tennessee Charitable Gift Annuity Act of 2008.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Statutes authorizing these new rules, 0780-01-70, are T.C.A. §§ 56-52-101 through 56-52-111.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All charitable organizations that issue charitable gift annuities in this State.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None. While this rule establishes some guidelines for licensing procedure, the fees for licensing and renewals are established by T.C.A. § 56-52-103.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Larry C. Knight, Jr., Assistant Commissioner for Insurance; Tony Greer, Assistant General Counsel.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Tony Greer, Assistant General Counsel.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Second Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-2199.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.