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Revision Type (check all that apply):
X 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**
0780-01-65	Annual Financial Reporting
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Substance of Proposed Rules

Chapter 0780-01-65
Annual Audited Financial Reports

Amendments

Chapter 0780-1-65 is amended by deleting the Chapter in its entirety and substituting the following language so that as amended the Chapter shall read:

Chapter 0780-01-65
Annual Financial Reporting

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0780-01-65-.01 Authority.

This Chapter is promulgated by the commissioner of commerce and insurance pursuant to T.C.A. §§ 56-1-501(h) and 56-2-301.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301. 56-1-408, 56-1-409, 56-1-410, 56-1-411.

0780-01-65-.02 Purpose.

The purpose of this Chapter is to improve the commissioner's surveillance of the financial condition of insurers by requiring (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants; (2) Communication of Internal Control Related Matters Noted in an Audit, and (3) Management's Report of Internal Control over Financial Reporting.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.03 Scope.

(1) Every insurer as defined in Rule 0780-01-65-.04 shall be subject to this Chapter. Insurers having direct premiums written in this state of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of direct written policies nationwide at the end of the

calendar year shall be exempt from this Chapter for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be so exempt.

(2) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from Rules 0780-01-65-.05 through .14 if:

(a) A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Rules 0780-01-65-.05, .12 and .13, respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada).

(b) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Rule 0780-01-65-.11.

(3) Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Report in this state provided the other state has substantially similar reporting requirements and the Report is filed with the commissioner of the other state within the time specified.

(4) This Chapter shall not prohibit, preclude or in any way limit the commissioner from ordering or conducting or performing examinations of insurers allowed by law.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.04 Definitions.

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this Chapter at the election of the controlling person. Refer to Rule 0780-01-65-.15(6) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in Rule 0780-01-65-.06.

(5) "Commissioner" means the commissioner of commerce and insurance.

(6) "Department" means the department of commerce and insurance.

(7) "Group of insurers" means those licensed insurers included in the reporting requirements of Title 56, Chapter 11 of the Tennessee Code Annotated, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of Internal control over financial reporting.

(8) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(9) "Independent board member" has the same meaning as described in Rule 0780-01-65-.15(4).

(10) "Insurer" means an insurer or insurance company as defined in Tenn. Code Ann. § 56-1-102 and authorized to do business in Tennessee under a license or a certificate of authority from the commissioner as referenced in Title 56 Chapter 2 or Chapter 25 of the Tennessee Code Annotated.

(11) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in Rule 0780-01-65-.06(2)(b)-(g) and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Rule 0780-01-65-.06(2)(b)-(g) and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in Rule 0780-01-65-.06(2)(b)-(g).

(12) "NAIC" means the National Association of Insurance Commissioners.

(13) "SEC" means the United States Securities and Exchange Commission.

(14) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(15) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in Paragraph (1) of this Rule.

(16) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

Authority: T.C.A. §§ 56-1-102, 56-1-501(h), 56-2-301 and 56-25-1602; Title 56, Chapters 2 and 11 of the Tennessee Code Annotated; Sarbanes-Oxley Act of 2002, Sections 201, 301, 404.

0780-01-65-.05 General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment

(1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for

requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(3) If an extension is granted in accordance with the provisions in Paragraph (2) of this Rule, a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting described in Rule 0780-01-65-.17.

(4) Every insurer required to file an annual audited financial report pursuant to this Chapter shall designate a group of individuals as constituting its audit committee, as defined in Rule 0780-01-65-.04. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this Chapter at the election of the controlling person.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.06 Contents of Annual Audited Financial Report

(1) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant;

(b) Balance sheet reporting admitted assets, liabilities, capital and surplus;

(c) Statement of operations;

(d) Statement of cash flow;

(e) Statement of changes in capital and surplus;

(f) Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the corresponding annual statement filed pursuant to Title 56, Chapter 1, Part 5 of the Tennessee Code Annotated or other applicable insurance statutory requirement with a written description of the nature of these differences; and

(g) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted).

Authority: T.C.A. §§ 56-1-501, 56-1-501(a)-(h) 56-2-301, 56-44-102.

0780-01-65-.07 Designation of Independent Certified Public Accountant

(1) Each insurer required by this Chapter to file an annual audited financial report must within sixty (60) days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this Chapter. Insurers not retaining an independent certified public accountant on the effective date of this Chapter shall register the name and address of

their retained independent certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this Rule include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Rule are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.08 Qualifications of Independent Certified Public Accountant

(1) The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as "indemnification") with respect to the audit of the insurer.

(2) Except as otherwise provided in this Chapter, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Tennessee Board of Public Accountancy, or similar code.

(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Title 56, Chapter 9 of the Tennessee Code Annotated, the mediation or arbitration provisions shall operate at the option of the statutory successor, to the extent allowed by law.

(4) (a) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make

application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

2. Premium volume of the insurer; or

3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file, with its annual statement filing, the approval for relief from Subparagraph (a) of this Paragraph with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(5) The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by a natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this Chapter; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Chapter, Rule 0780-01-54-.09, Rule 0780-01-78-.04, or Rule 0780-01-83-.08.

(6) The commissioner may hold a hearing in accordance with the procedures set out in Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this Chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this Chapter.

(7) (a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

2. Financial information systems design and implementation;

3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

4. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

(i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(ii) The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and

(iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;

6. Management functions or human resources;

7. Broker or dealer, investment adviser, or investment banking services;

8. Legal services or expert services unrelated to the audit; or

9. Any other services that the commissioner determines, by regulation, are impermissible.

(b) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(8) Insurers having direct written and assumed premiums of less than one hundred million dollars ($100,000,000) in any calendar year may request an exemption from Paragraph (7)(a) of this Rule. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with this Chapter would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(9) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in Paragraph (7)(a) of this Rule or that do not conflict with Paragraph (7)(b) of this Rule, only if the activity is approved in advance by the audit committee, in accordance with Paragraph (10) of this Rule.

(10) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

(a) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(b) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(11) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by Paragraph (10) of this Rule. The decisions of

any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(12) (a) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This Rule shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from Subparagraph (a) of this Paragraph with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Authority: TC.A. §§ 4-5-301, 56-1-501(b), 56-1-501 (h), 56-2-301 and 56-44-102.

0780-01-65-.09 Consolidated or Combined Audits

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this Rule shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.10 Scope of Audit and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to Rule 0780-01-65-.06 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Rule 0780-01-65-.17, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the NAIC as the independent certified public accountant deems necessary.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.11 Notification of Adverse Financial Condition

(1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Tennessee insurance laws and regulations as of that date. An insurer that has received a report pursuant to this Paragraph shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(2) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the Paragraph (1) of this Rule if the statement is made in good faith in compliance with that Paragraph.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this Chapter, becomes aware of facts that might have affected his or her report, the accountant must take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.12 Communication of Internal Control Related Matters Noted in an Audit

(1) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its Internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in Rule 0780-01-65-.05(1)) in the insurer's Internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.13 Accountant's Letter of Qualifications

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Tennessee Board of Public Accountancy, or similar code;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Chapter shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this Chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of Rule 0780-01-65-.14 and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in Rule 0780-01-65-.14;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

(6) A representation that the accountant is in compliance with the requirements of Rule 0780-01-65-.08.

Authority: TC.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.14 Availability and Maintenance of Independent Certified Public Accountants Workpapers

(1) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(2) Every insurer required to file an audited financial report pursuant to this Chapter, shall require the accountant to make available for review by department examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the offices of the department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department has filed a report on examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.

(3) In the conduct of the aforementioned periodic review by the department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department as provided for under Tenn. Code Ann. § 56-1-411 and other statutory provisions.

Authority: T.C.A. §§ 56-1-411, 56-1-501(h), 56-2-301, 56-11-108, 56-11-109 and 56-46-109..

0780-01-65-.15 Requirements for Audit Committees

(1) This Rule shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(2) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or

issuing the audited financial report or related work pursuant to this Chapter. Each accountant shall report directly to the audit committee.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Paragraph (6) of this Rule and Rule 0780-01-65-.04(3).

(4) In order to be considered independent for purposes of this Rule, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(6) To exercise the election of the controlling person to designate the audit committee for purposes of this Chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(7) (a) The audit committee shall require the accountant that performs for an insurer any audit required by this Chapter to timely report to the audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by Paragraph (7)(a) of this Rule may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(8) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
$0 - $300,000,000	**Over $300,000,000 - $500,000,000**	**Over $500,000,000**
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note	Supermajority of members (75% or more) shall be independent. See also Note

	A and B.	A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital (RBC) action level event, as described in Title 56, chapter 46 of the Tennessee Code Annotated, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than five hundred million dollars ($500,000,000) in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(9) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than five hundred million dollars ($500,000,000) may make application to the commissioner for a waiver from this Rule's requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this Rule with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Authority: T.C.A. §§ 56-1-501(h), 56-2-301 and 56-46-101 et seq..

0780-01-65-.16 Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

(1) No director or officer of an insurer shall, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this Chapter; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this Chapter.

(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this Chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of Paragraph (2) of this Rule, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Authority: T.C.A. §§ 56-1-501, 56-1-501(h), 56-1-503 and 56-2-301.

0780-01-65-.17 Management's Report of Internal Control over Financial Reporting

(1) Every insurer required to file an audited financial report pursuant to this Chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five hundred million dollars ($500,000,000) or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in Rule 0780-01-65-.04. The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under Rule 0780-01-65-.12. Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in Paragraph (1) of this Rule, the commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as identified in the insurance code or as specifically described in Rule 0780-01-66.

(3) An insurer or a group of insurers that is

(a) directly subject to Section 404;

(b) part of a holding company system whose parent is directly subject to Section 404;

(c) not directly subject to Section 404 but is a SOX Compliant Entity; or

(d) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity;

may file its or its parent's Section 404 Report and an addendum in satisfaction of this Rule's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Rule 0780-01-65-.06(2)(b)-(g)) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Rule 0780-01-65-.06(2)(b)-(g)) excluded from the Section 404 Report. If there are internal controls of the insurer or Group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a report under this Rule, or (ii) the Section 404 Report and a report under this Rule for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's Report of Internal Control over Financial Reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Paragraph (4) of this Rule, above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's Report on Internal Control over Financial Reporting, required by Paragraph (1) of this Rule, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the commissioner.

Authority: T.C.A. §§ 56-1-411, 56-1-501(h), 56-2-301, 56-46-105(b)(2).

0780-01-65-.18 Exemptions and Effective Dates

(1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this Chapter if the commissioner finds, upon review of the application, that compliance with this Chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this Chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the Tennessee Uniform Administrative Procedures Act, as codified in Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated.

(2) Domestic insurers retaining a certified public accountant on the effective date of this Chapter who qualify as independent shall comply with this Chapter for the year ending December 31, 2009 and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of this Chapter who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise.

(a) As of December 31, 2009, file with the commissioner an audited financial report;

(b) For the year ending December 31, 2009 and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this Chapter.

(4) Foreign insurers shall comply with this Chapter for the year ending December 31, 2009 and each year thereafter, unless the commissioner permits otherwise.

(5) The requirements of Rule 0780-01-65-.08(4) of this Chapter shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

(6) The requirements of Rule 0780-01-65-.05(4) and Rule 0780-1-65-.15 of this Chapter are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

(7) The requirements of Rule 0780-01-65-.17 of this Chapter are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

Authority: T.C.A. §§ 4-5-301 et seq., 56-1-501(h) and 56-2-301.

0780-01-65-.19 Canadian and British Companies

(1) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(2) For such insurers, the letter required in Rule 0780-01-65-.07(2) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Rule 0780-01-65-.05 and shall affirm that the opinion expressed is in conformity with those requirements.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

0780-01-65-.20 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.

Authority: T.C.A. §§ 56-1-501(h) and 56-2-301.

* 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 7/9/09 (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: 11/26/08

Notice published in the Tennessee Administrative Register on: 12/15/08

Rulemaking Hearing(s) Conducted on: (add more dates). 01/15/09

Date: 7/9/09

Signature: Leslie A Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner of Commerce and Insurance

KRISTINA D. RUST STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: 7/9/09

Notary Public Signature: Kristina D. Rust

My commission expires on: 3/10/12

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

7-30-09
Date

Department of State Use Only

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Filed with the Department of State on: 8/6/09

Effective on: 11/4/09

Tre Hargett

Tre Hargett
Secretary of State

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
0780-01-65-.03(1)

It was commented that the second line of Proposed Rule 0780-1-65-.03(1) say "direct or assumed premium" instead of "direct premium".

Agency Response to Comment 1

This Rule is based on a model rule adopted by the National Association of Insurance Commissioners. The Department is committed to the concept of uniform financial regulation among the states. The Department recognized that the language of the Rule may be worded differently, but the Department is committed to keeping the model language intact, unless it creates confusion.

Comment 2
0780-01-65-.03(1)

It was commented that the Sixth line of Proposed Rule 0780-1-65-.03(1) say "except that reinsurers" instead of "except that insurers."

Agency Response to Comment 2

It is the Department's position that the word "insurer" is the proper word to be used in that sentence.

Comment 3
0780-01-65-.03(1)

It was commented that wholly-owned insurance company subsidiaries of a Sarbanes-Oxley Compliant entity should be exempt from the entirety of the proposed Rule 0780-01-65.

Agency Response to Comment 3

The Department disagrees with this comment and believes that all insurers covered by the proposed Rule 0780-01-65 should file annual financial reports. The Department would like to reiterate that it is committed to keeping the model language intact, unless it creates confusion.

Comment 4
0780-01-65-.03(1)

It was commented that the amount for the exemption found in Rule 0780-01-.03(1) should be increased from one million dollars ($1,000,000) in direct written premiums and one thousand (1,000) policyholders or certificateholders to ten million dollars ($10,000,000) and two thousand five hundred (2,500) policyholders or certificateholders.

Agency Response to Comment 4

The Department disagrees with this comment and believes that the one million dollar ($1,000,000) and one thousand (1,000) policyholder or certificateholder thresholds are appropriate. Furthermore, the Rule currently applies these thresholds. The Department would like to reiterate that it is committed to keeping the model language intact, unless it creates confusion.

Comment 5
0780-01-65-.03(1)

It was commented that the Department should raise the threshold for compliance from one million dollars $1,000,000 in assumed premiums pursuant to contracts and/or treaties of reinsurance to an unspecified greater amount of assumed premiums pursuant to contracts and/or treaties of reinsurance.

Agency Response to comment 5

The Department disagrees with this comment and believes that the one million dollar ($1,000,000) in assumed premiums pursuant to contracts and/or treaties of reinsurance is the proper threshold to trigger compliance with this Rule. Furthermore, the amount of the exemption is the same as the exemption in the current Rule 0780-01-65. The Department would like to reiterate that it is committed to keeping the model language intact, unless it creates confusion.

Comment 6
0780-01-65-.04(10)

It was commented that the definition of insurer may be broad enough to encompass self-insured trusts and that the Department should clarify if this Rule applied to such entities.

Agency Response to comment 6

It is the Department's position that this Rule does not apply to self insured trusts. Should the Department believe such an application to be appropriate, it will amend Rule 0780-01-54.

Comment 7
0780-01-65-.05(1)

It was commented that the advance notice from the commissioner for filing the audited financial report before June 1 be increased from ninety (90) days to one hundred twenty (120) days.

Agency Response to Comment 7

The Department disagrees with this comment and believes ninety (90) days advance notice to be appropriate. Furthermore, the ninety (90) days advance notice is the same as in the current Rule 0780-01-65. The Department would like to reiterate that it is committed to keeping the model language intact, unless it creates confusion.

Comment 8
0780-01-65-.06(2)(f)

It was commented that Proposed Rule 0780-1-65-.06(2)(f) is redundant because the same notes have already been filed with the NAIC.

Agency Response to Comment 8

The Department disagrees with the comment and does not believe that this requirement is redundant. If the notes in the audited statement differ from the notes in the annual statement, then a statement as to why there are differences must be included. The Department would like to reiterate that it is committed to keeping the model language intact, unless it creates confusion.

Comment 9
0780-01-65-.06(2)(g)

It was commented that Proposed Rule 0780-1-65-.06(g) does not state how closely the annual financial report has to resemble the annual statement.

Agency Response to Comment 9

The financial statement portion of the annual audited financial report must be prepared in the form and use substantially similar groupings to that used in the annual statement. The language of this proposed Rule has not been changed from the current Rule. As such, companies who have filed audited statements in the past should not look at these amendments as requiring any change in the format in which they comply with the current Rule.

Comment 10
0780-01-65-.08(4)(a)

It was commented on what was the rationale for changing the timing for serving as lead audit partner from 7 years on, 2 off to 5 years on and 5 years off, as found in Proposed Rule 0780-1-65-.08 (4) (a).

Agency Response to Comment 10

It is the Department's position that this change is appropriate in order to maintain the appropriate checks and balances and to ensure the accuracy and independence of the annual audited financial report.

Comment 11
0780-01-65-.08(5)(c)

It was commented that "Rule 0780-78-.04" should be changed to "Rule 0780-01-78-.04".

Agency Response to Comment 11

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

Comment 12
0780-01-65-.08(6)

It was asked what would constitute notice and grounds for holding a hearing pursuant to Proposed Rule 0708-1-65-.08(6)

Agency Response to Comment 12

Should the Department determine that an accountant proposed or being used by the insurer is not qualified to deliver the opinions required in the audited statement, the Department may conduct a hearing to determine whether the company should be required to replace the accountant. Many of the grounds for the commissioner to use in making such a determination are contained in the Rule itself. Furthermore, this paragraph has not been changed from the current Rule.

Comment 13
0780-01-65-.08(7)

It was commented that proposed Rule 0780-1-65-.08(7) needs clarification on whether tax returns are considered in the contemporaneous services offered by an accountant.

Agency Response to Comment 13

The Department's position is the same position on prohibited services as that taken by the Sarbanes Oxley Act and the guidance provided by the Securities and Exchange Commission's Final Rule No. 33-8183, *Strengthening the Commission's Requirements Regarding Auditor Independence*, as referenced in the NAIC's model regulation. Accordingly, the Sarbanes Oxley Act provides that the provision of "any non-audit service, including tax services, that is not described" as a prohibited service, can be provided by the auditor without impairing the auditor's independence "only if" the service has been pre-approved by the issuer's audit committee.

The Department's position is that non-audit tax services that are not described as a prohibited service by the Sarbanes Oxley Act or the Securities and Exchange Commission's Final Rule No. 33-8183, *Strengthening the Commission's Requirements Regarding Auditor Independence*, may be provided by the auditor if the insurer's audit committee has pre-approved such service.

Comment 14
0780-01-65-.08(7)(a)1.

It was commented that the term "bookkeeping or other services related to the accounting record or financial statements" is vague and that such language should either be limited to bookkeeping or be specifically explained in the rules.

Agency Response to Comment 14

The Department's position is the same position as that taken by the Sarbanes Oxley Act and the guidance provided by the Securities and Exchange Commission's Final Rule No. 33-8183, *Strengthening the Commission's Requirements Regarding Auditor Independence*, as referenced in the NAIC's model regulation. As such, it is the Department's position that such term is adequately explained by the Sarbanes Oxley Act and the guidance provided by the Securities and Exchange Commission's Final Rule No. 33-8183.

Comment 15
0780-01-65-.11

It was commented that the word "material," as it is used in Rule 0780-1-65-.11, needs to be defined.

Agency Response to Comment 15

It is the Department's position that "materiality," as defined by the financial accounting standards board, is the magnitude of an omission or misstatement of accounting information that in the light of the surrounding circumstances makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Further, per the NAIC Examiners Handbook, materiality is the dollar amount above which the examiner's perspective of the company's financial portion position will be influenced. Finally, materiality is defined in the accounting standards for the NAIC.

Comment 16
0780-01-65-.12(1)

It was commented that Rule 0780-01-65-.12(1) makes reference to Statement on Accounting Standard number 60, which has clearly been superseded by Statement on Accounting Standard number 112.

Agency Response to Comment 16

Rule 0780-01-65-12(1) accounts for any changes to Statement on Auditing Standard 60 by citing to "Statement on Auditing Standard 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement". The Department recognizes that the language of the Rule may be worded better or differently, but the Department is committed to keeping the model language intact, unless it creates confusion.

Comment 17
0780-01-65-.14

It was commented that the Rule makes reference to the term "workpapers," which has been superseded by the term "audit documentation" under Statement on Auditing Standard number 103 to use the term audit documentation, which is a broader concept than a physical, tangible piece of paper.

Agency Response to Comment 17

It's the Department's position that the word "workpaper" is the proper word to be used in that sentence. The Department recognizes that the language of the Rule may be worded better or differently, but the Department is committed to keeping the model language intact, unless it creates confusion.

Comment 18
0780-01-65-.15

It was commented that the requirement to maintain independent audit committee members may be a burden on small to medium sized insurers with direct written and assumed premiums in five million dollar ($5,000,000) to fifteen million dollar ($15,000,000) range.

Agency Response to Comment 18

The Department recognized that these companies would not be exempted from filing annual audited reports and maintaining an audit committee under the proposed Rule. However, under Rule 0780-01-65-.15, the minimum threshold for requiring any independent audit committee members for an insurer is three hundred million dollars ($300,000,000) in direct written and assumed premiums. Small and medium sized insurers with direct written and assumed premiums in five million dollar ($5,000,000) to fifteen million dollar ($15,000,000) range would not be subject to the requirement to maintain any independent audit committee members. Finally, the Department takes the position that the requirement to maintain independent audit committee members is appropriate in order to maintain the appropriate checks and balances and to ensure the accurate independence of the annual audited financial report.

Comment 19
0780-01-65-.15(6)

It was commented that 0780-01-65-.15(6) should be changed to include, at the beginning of the first sentence, the language "Notwithstanding the provisions of 0780-01-65-.15(1),".

Agency Response to Comment 19

The Department takes the position that such a change is not necessary. The Department recognizes that the language of the Rule may be worded better or differently, but the Department is committed to keeping the model language intact, unless it creates confusion.

Comment 20
0780-01-65-.15(7)

It was commented that Rule 0780-01-65-.15(7) refers to Statement on Accounting Standard number 61, which has been superseded by Statement on Accounting Standard number 114.

Agency Response to Comment 20

Rule 0780-01-65-.15(7) accounts for any changes to Statement on Auditing Standard 61 by citing to "Statement on Auditing Standard 61, *Communication with Audit Committees*, or its replacement". The Department recognizes that the language of the Rule may be worded better or differently, but the Department is committed to keeping the model language intact, unless it creates confusion.

Comment 21
0780-01-65-.18(3)

It was commented that the exemption and effective dates should be changed to a later date.

Agency Response to Comment 21

The Department agrees with the comment and has changed the effective dates in Rule 0780-01-65-.18(3) to December 31, 2009.

Comment 22
0780-01-65-.18(4)

It was commented that the exemption and effective dates should be changed to a later date.

Agency Response to Comment 22

The department agrees with this comment and has changed the effective dates in Rule 0780-01-65-.18(4) to December 31, 2009.

Regulatory Flexibility Addendum
Pursuant to Public Chapter 464 of the 105th 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 amendments in this notice of rule making hearing are such that they will have an economic impact on small business (business with fifty (50) or fewer employees). The proposed amendments are anticipated not to have a significant economic impact affecting small business. The proposed amendments will bring Tennessee into compliance with adopted revisions to the National Association of Insurance Commissioners Model Regulation #25, *Annual Financial Reporting*. The promulgation of these proposed amendments is required in order to incorporate into our rules the leading practices from the Sarbanes-Oxley Act of 2002 regarding auditor independence, corporate governance and internal control over financial reporting.

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

(1) These proposed amendments will not apply to all small businesses who are subject to regulation as insurance companies as found in Title 56 of the Tennessee Code Annotated if they collect direct premiums written in this state of less than $1,000,000 in any calendar year and have less than 1,000 policyholders or certificateholders of direct written policies nationwide at the end of the calendar year. However, insurers having assumed premiums pursuant to contracts of reinsurance of $1,000,000 or more will not be so exempt.

(2) The proposed amendments require insurance companies, who are not exempt, to file annual audited financial statements prepared by an independent certified public accountant and a management's report of internal control over financial reporting.

(3) The effect on small businesses is negligible. The proposed amendments will have no effect on consumers and will not affect insurance companies with less that $1,000,000 in yearly direct premiums or assume less that $1,000,000 of premiums under a reinsurance contract.

(4) There are no alternative methods to eliminate the rules and language in conflict with existing state law.

(5) There are no other state or federal counterparts.

(6) Small businesses that are subject to regulation as insurance companies as found in Title 56 of the Tennessee Code and write less that $1,000,000 in yearly direct premiums or assume less that $1,000,000 of premiums under a reinsurance contract are exempt from these proposed amendments.

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 amendments to Chapter 0780-1-65 Annual Audited Financial Reports come directly from model regulations that were adopted by the National Association of Insurance Commissioners ("NAIC") in 2006. These amendments change the existing Chapter 0780-1-65 Annual Audited Financial Reports Rule by adding three substantial requirements: 1) insurance companies will have to maintain an audit committee responsible for the appointment, compensation and oversight of the work of any accountant; 2) insurance companies with $300,000,000 or more in direct written and assumed premiums must maintain independent audit committee members and 3) the management of an insurance company will have file a Management's Report of Internal Control over Financial Reporting.

(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 amendments to Chapter 0780-01-65 are Tenn. Code Ann. §§ 56-1-501(h) and 56-2-301.

(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 insurers or insurance companies as defined in Tenn. Code Ann. § 56-1-102 and authorized to do business in Tennessee under a license or a certificate of authority from the commissioner as referenced in Title 56 Chapter 2 or Chapter 25 of the Tennessee Code Annotated of the Tennessee Code Annotated that have more than one million dollars ($1,000,000) in direct written premiums and one thousand (1,000) policyholder or certificateholder or one million dollars ($1,000,000) in assumed premiums pursuant to contracts of reinsurance.

(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.

(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) 741-3388.

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

None.