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Sequence Number: 08-15-14
Rule ID(s): 5787
File Date: 8/13/14
Effective Date: 11/11/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
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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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-85	Market Conduct Annual Statement Filing Requirements
Rule Number	Rule Title
0780-01-85-.01	Purpose.
0780-01-85-.02	Scope.
0780-01-85-.03	Authority.
0780-01-85-.04	Definitions.
0780-01-85-.05	Market conduct annual statement.
0780-01-85-.06	Confidential materials.
0780-01-85-.07	Violations and penalties.
0780-01-85-.08	Severability.

Chapter 0780-01-85
Market Conduct Annual Statement Filing Requirements

New Rules

0780-01-85-.01 Purpose.
0780-01-85-.02 Scope.
0780-01-85-.03 Authority.
0780-01-85-.04 Definitions.
0780-01-85-.05 Market conduct annual statement.
0780-01-85-.06 Confidential materials.
0780-01-85-.07 Violations and penalties.
0780-01-85-.08 Severability.

0780-01-85-.01 Purpose.

The purpose of this Chapter is to set forth the manner in which insurers licensed in the State of Tennessee, except those that write only accident and health insurance, file market conduct annual statements with the commissioner in order to foster nationwide consistency in market conduct oversight.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.02 Scope.

Every insurer authorized to do business under the provisions of Title 56, that is required to file annual statements pursuant to T.C.A. §§ 56-1-501, 56-44-102, or otherwise by law, with the exception of those that write only accident and health insurance, must file market conduct annual statements in the manner provided by this Chapter.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.03 Authority.

This Chapter is promulgated by the commissioner pursuant to 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.04 Definitions.

- (1) "Commissioner" means the commissioner of the Tennessee Department of Commerce and Insurance.
- (2) "Department" means the Tennessee Department of Commerce and Insurance.
- (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) "NAIC" means the National Association of Insurance Commissioners.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.05 Market conduct annual statement.

- (1) Every insurer with a certificate of authority in this State, with the exception of those that write only accident and health insurance, shall electronically file with the commissioner its market conduct annual statement, as authorized by T.C.A. § 56-8-107, in accordance with the filing instructions published by the NAIC.

- (2) For purposes of this chapter, the market conduct annual statement filing is not complete until it has been received by the commissioner, in either hard copy or electronic form, as designated by the commissioner.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.06 Confidential Materials.

All testimony, documents and other information submitted pursuant to Rule 0780-01-85-.05, and all records and documents maintained pursuant to Rule 0780-01-85-.05 shall be privileged and shall not be disclosed pursuant to T.C.A. § 10-7-503 or 56-1-602, nor shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within the commissioner's discretion, may share the documents and information with other state or federal agencies, or with any law enforcement authority.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

0780-01-85-.07 Violations and penalties.

Any insurer that fails to make and file its market conduct annual statement in the form and time provided by Rule 0780-01-85-.05 shall be subject to the applicable penalties provided for by T.C.A. § 56-2-305, as well as such other sanctions provided for by law.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. §§ 56-2-305 and 56-8-107.

0780-01-85-.08 Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Chapter and the application of such provision to other persons or circumstance shall not be affected thereby. To this end, the provisions of this chapter are declared severable.

Authority: 2009 Public Acts, Chapter 383 and T.C.A. § 56-8-107.

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

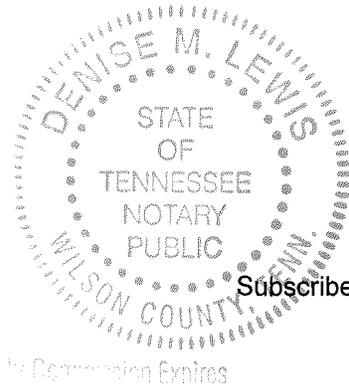
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 4/13/14 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 8/17/13

Rulemaking Hearing(s) Conducted on: (add more dates). 10/14/13



Date: April 15, 2014

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: April 15, 2014

Notary Public Signature: Denise M Lewis

My commission expires on: 9/15/2016

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 Jr
 Robert E. Cooper, Jr.
 Attorney General and Reporter
8-6-14
 Date

Department of State Use Only

Filed with the Department of State on: 8/13/14

Effective on: 11/1/14

Tre Hargett
 Tre Hargett
 Secretary of State

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 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

0780-01-85-.02

It was commented that the scope of this rule, as drafted, only requires insurance companies that are licensed pursuant to title 56 and required to file annual statements pursuant to T.C.A. § 56-1-501, 56-44-102, with the exception of those that write only accident and health insurance, must file market conduct annual statements in the manner provided by this Chapter. It was further commented that the scope of this rule did not apply to single employer workers' compensation self-insureds or workers' compensation self-insurance pools.

Agency Response to Comment 1

The Department agrees with this comment. This rule does not apply to single employer workers' compensation self-insureds or workers' compensation self-insurance pools.

Comment 2

0780-01-85-.04

It was commented that the term complaint shows up in the definitions section but is not used anywhere else in the rule.

Agency Response to Comment 2

The Department has removed the definition of complaint from the rule.

Comment 3

0780-01-85-.06

It was commented that this rule seeks to make information confidential by rule and that only a statute can declare information to be confidential.

Agency Response to Comment 3

The Department disagrees with this comment. Rule 0780-01-85-.06 is based on statutory authority found in T.C.A. § 56-8-107. T.C.A. § 56-8-107(c) states that the Commissioner may promulgate rules that require companies authorized to do business under this title, with the exception of those that write accident and health insurance, to annually file in the office of the commissioner an annual statement in a form adopted for use by companies, which shall provide information concerning its market conduct of that year. T.C.A. § 56-8-107(d) states that All testimony, documents and other information submitted to the commissioner pursuant to this section, and all records and documents maintained pursuant to this section shall be privileged and shall not be disclosed pursuant to § 10-7-503 or § 56-1-602, nor shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within the commissioner's discretion, may share the documents and information with other state or federal agencies, or with any law enforcement authority.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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 rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are anticipated not to have a significant economic impact affecting small businesses. 2009 Public Acts, Chapter 383 and T.C.A. §§ 56-2-305 and 56-8-107 authorize the Commissioner to promulgate rules that require companies authorized to do business under title 56, with the exception of those that write accident and health insurance, to annually file information concerning its market conduct of that year. This new rule will require companies subject to this rule to electronically file with the commissioner its market conduct annual statement in accordance with the filing instructions published by the National Association of Insurance Commissioners. This rule will allow Tennessee to participate in a uniform system of collecting market-related information to help states monitor the market conduct of companies. Currently, this uniform system is used to collect claims and underwriting data on the Private Passenger Auto, Homeowners, Life and Annuity lines of business. This rule will allow the commissioner to identify concerns regarding the timeliness of claim payments and policy replacement counts. Currently, forty-five states participate in this uniform system. Tennessee is one of five states that do not currently participate. The other non-participating states are North Dakota, South Dakota, New York and Connecticut. Arkansas became the most recent state to participate in 2012. Tennessee is currently the only southeastern state that is not participating.

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

- (1) The proposed rules will only apply to insurance companies licensed in this State.
- (2) Insurance companies licensed in this State are likely already participating in this uniform system. This uniform system is currently operating in 45 other states. Tennessee would be the 46th state to join. Companies that operate in more than one state are already going to be participating in this uniform system and should incur little to no additional cost to comply with this rule.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers and will only affect insurance companies.
- (4) There are no alternative methods to make the rule less costly, less intrusive or less burdensome.
- (5) There are no other counterparts in the State of Tennessee; however, this regulation is similar to regulations in effect in 45 other states and the District of Columbia.
- (6) Only insurance companies are subject to this rule. Most insurance companies licensed in this State have greater than 50 employees. Nevertheless, exempting any insurance company from this regulation would place the Tennessee policyholders at a greater risk of having their claims not paid timely.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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 new rule require companies subject to this rule to electronically file with the commissioner its market conduct annual statement in accordance with the filing instructions published by the National Association of Insurance Commissioners. This rule will allow Tennessee to participate in a uniform system of collecting market-related information to help states monitor the market conduct of companies.

- (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;

2009 Public Acts, Chapter 383 and T.C.A. §§ 56-2-305 and 56-8-107 authorize the Commissioner to promulgate rules that require companies authorized to do business under title 56, with the exception of those that write accident and health insurance, to annually file information concerning its market conduct of that year.

- (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;

These rules only apply to insurance companies licensed in the State of Tennessee

- (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;

Michael Humphreys, Director of Insurance of the Insurance Division of the Tennessee Department of Commerce and Insurance.

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

Tony Greer, Chief Counsel for Insurance and TennCare Oversight.

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

Tony Greer, Eighth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, (615) 253-7847. tony.greer@tn.gov

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

None.

