G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Educator Preparation
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-1-302(a)(11), 49-5-101(e), 49-5-108(a)(1), 49-5-108(c), and 49-5-108(d)(1)
EFFECTIVE DATES:	January 28, 2019 through July 27, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	All Educator Preparation Providers (EPPs, such as a college or university) and the Specialty Area Programs (SAP) that lead to licensure shall be approved by the State Board of Education (SBE). This emergency rule presents an updated, comprehensive revision of the educator preparation rule that governs the approval of EPP and SAP programs, including how EPPs may apply and be evaluated for initial and continuing approval from the SBE to prepare teachers and other school personnel for licensure. All licensure programs must ensure that candidates have opportunities to attain the knowledge and skills specified by the SBE, have clinical experiences in accordance with guidelines established by the SBE and the Department, and meet other standards, procedures, and guidelines established by the SBE.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule has no 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;

All Educator Preparation Providers (EPPs, such as a college or university) and the Specialty Area Programs (SAP) that lead to licensure shall be approved by the State Board of Education (SBE). This rule change presents an updated, comprehensive revision of the educator preparation rule that governs the approval of EPP and SAP programs, including how EPPs may apply and be evaluated for initial and continuing approval from the SBE to prepare teachers and other school personnel for licensure. All licensure programs must ensure that candidates have opportunities to attain the knowledge and skills specified by the SBE, have clinical experiences in accordance with guidelines established by the SBE and the Department, and meet other standards, procedures, and guidelines established by the SBE.

(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;

T.C.A. § 49-1-302(a)(11) - Approve, disapprove, or amend rules and regulations prepared by the Commissioner to implement policies, standards, or guidelines of the Board in order to effectuate this section.

T.C.A. § 49-5-101(e) - The State Board of Education shall not issue professional licenses upon the work done in any college or university, except from a list of standard teacher-training institutions, colleges and universities that shall be approved by the state board of education after inspection as may be provided by the board.

T.C.A. § 49-5-108 (a)(1) - Complete jurisdiction over the issuance and administration of licenses for supervisors, principals and public school teachers for kindergarten through grade twelve (K-12), including teachers in preschools operated under the authority of chapter 6, part 1 of this title, shall be vested in the State Board of Education.

T.C.A. § 49-5-108 (c) - The State Board of Education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers.

T.C.A. § 49-5-108(d)(1) - The State Board of Education has the authority to promulgate rules and regulations prescribing minimum standards for licenses and certificates differing from the requirements prescribed in this chapter.

(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;

Educator preparation providers and students enrolled in educator preparation programs are most directly affected by this rule. Besides the public comments received in favor of the rule at the rulemaking hearing for the permanent rule, neither has urged adoption or rejection of this rule.
The Tennessee Department of Education is also directly affected by this rule and urges adoption of the rule.
The State Board of Education urges adoption of this rule.

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

Bethel University v. Tennessee State Board of Education, 2018 WL3860750 (Tenn. Ct. App. Aug. 14, 2018)

(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;

N/A

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

Angie Sanders Angela.C.Sanders@tn.gov Nathan James Nathan.James@tn.gov Elizabeth Fiveash Elizabeth.Fiveash@tn.gov

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

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(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

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

N/A

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Sequence Number: 01-26-19
Rule ID(s): 8524
File Date: 1/28/19
Last Effective Day: 7/27/19

Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Angie Sanders
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Statement of Necessity:

The State Board's Educator Preparation rule (0520-02-04) and the corresponding State Board Educator Preparation Policy 5.504 govern the process whereby Educator Preparation Providers (such as a college or university) in the state can apply for conditional and continuing approval from the State Board of Education to operate an Educator Preparation Program (EPP) to prepare teachers and other school personnel for licensure. In recent litigation, the Davidson County Chancery Court held that certain provisions of State Board Policy 5.504 should have been promulgated as a rule, and therefore the State Board of Education could not take action under the policy. Specifically, the court ruled that the process through which Educator Preparation Providers can apply for approval, and the standards by which a provider can have its EPP approved should be contained in rule. Recently, the Tennessee Court of Appeals upheld this portion of the decision of the Chancery Court on the ground that certain provisions of State Board Policy 5.504 should have been promulgated as a rule. Additionally, promulgation of a rule is necessary under the new definition of a rule contained in T.C.A. § 4-5-102 (12).

Pursuant to T.C.A. § 4-5-208 (a)(1) and (3), the State Board of Education must act to promulgate an emergency rule to establish the standards whereby the State Board can act to approve or deny any educator preparation programs that apply for approval within the state. Without a rule in place, the State Board of Education cannot act to approve or deny: (1) new providers seeking conditional approval to establish an educator preparation program in Tennessee, (2) existing providers up for their seven-year continuing approval cycle or requiring interim review, and (3) new specialty area programs (i.e., programs to offer additional types of endorsements, such as English as a Second Language or secondary science) at existing providers. Further delay in the implementation of this rule would cause significant disruption to current operating teacher preparation programs who will be up for continuing approval, and to preparation programs who will be applying for conditional approval. Additionally, without this rule, the State Board will not be able to act to approve any new specialty area programs for licensure of teachers across the state.

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 make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-02-04	Educator Preparation
Rule Number	**Rule Title**
0520-02-04-.01	Scope of Rules
0520-02-04-.03	Eligible Educator Preparation Providers
0520-02-04-.04	Approval of Educator Preparation Providers
0520-02-04-.06	Program Requirements
0520-02-04-.07	Provider and Program Reviews and Annual Reports
0520-02-04-.08	Admission to Educator Preparation Programs
0520-02-04-.09	Partnerships
0520-02-04-.10	Clinical Experiences

RULES OF

THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-04

EDUCATOR PREPARATION

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0520-02-04-.01 Scope of Rules

All educator preparation providers and the specialty area programs they offer must be approved by the State Board of Education (State Board). All educator preparation providers and specialty area programs currently approved as of January 8, 2019 under the State Board Educator Preparation Policy shall maintain their current approval status and shall be subject to all requirements under this Rule. All qualifying organizations or specialty area programs not currently approved by the State Board as of January 8, 2019 shall be considered for approval under this Rule.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed June 30, 2005; effective October 28, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed July 31, 2008; effective November 28, 2008. Amendment filed September 23, 2008; effective January 28, 2009. Amendments filed April 30, 2009; effective August 28, 2009. Amendments filed December 19, 2012; effective May 31, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendment filed July 23, 2014; effective October 20, 2014. Repeal and new rule 0520-02-04-.01 filed May 29, 2015; effective August 27, 2015. Amendment of rule 0520-02-04 (9)(a) filed May 29, 2015; effective August 27, 2015. On July 30, 2015, the State Board of Education filed a withdrawal of the rule 0520-02-04 (9)(a).*

0520-02-04-.02 Definitions

(1) "Annual report" means detailed, candidate-level data for each Educator Preparation Provider (EPP) compiled each year. Annual reports provide evidence of EPP effectiveness and are used for ongoing approval.

(2) "Candidate" means an individual enrolled in an educator preparation program that has been approved by the State Board.

(3) "Clinical experiences" means guided, hands-on, practical applications and demonstrations of professional knowledge of theory to practice, skills, and dispositions through collaborative and

facilitated learning in field-based assignments, tasks, activities, and assessments across a variety of settings.

(4) "Clinical practice" means student teaching, internship, or job embedded opportunities that provide candidates with sustained school-based responsibilities, assignments, tasks, and assessments that allow a candidate to demonstrate the professional knowledge, skills, and dispositions to be an effective educator.

(5) "Completer" means an individual who has completed the requirements of an educator preparation program that has been approved by the State Board.

(6) "Comprehensive review" means the review that each EPP must complete every seven (7) years in order to maintain state approval.

(7) "Conditional approval" means the provider or specialty area program has met preconditions and demonstrated alignment to all appropriate standards and expectations. The provider or specialty area program has not yet been reviewed for the purpose of obtaining full approval.

(8) "Department" means the Tennessee Department of Education.

(9) "Endorsement Area" means the subject and/or grade level for which a licensed educator is prepared to provide instruction, leadership, or services in schools or districts. When applying for licensure, each teacher candidate must meet requirements in at least one (1) area of endorsement.

(10) "EPP" means an Educator Preparation Provider responsible for managing, operating, or coordinating programs for the preparation and licensure of teachers and other school personnel that has been approved by the State Board.

(11) "ERO" means a Tennessee-based Education-Related Organization.

(12) "Focused review" means a review of an EPP that is triggered when an EPP does not meet one (1) or more standards during the comprehensive review.

(13) "Full approval" means the approval status of an EPP that has met the requirements for initial approval, been approved by the State Board, has participated in the annual review process each year, and has undergone a comprehensive review every seven (7) years.

(14) "IHE" means an Institution of Higher Education.

(15) "Initial approval" means the first step of approval for new EPPs. The initial approval period shall last for a minimum of three (3) years and a maximum of five (5) years.

(16) "Instructional Leader Preparation Program (ILPP)" means a program that is approved for the preparation of school leaders.

(17) "Interim review" means a review of an EPP or an individual SAP that is triggered by performance that is below expectations on the annual report for a minimum of two (2) consecutive years.

(18) "LEA" means a Tennessee Local Education Agency.

(19) "Primary LEA partnership" means a partnership between an EPP and one (1) or more LEAs in which both parties collaborate to establish an explicit process for identifying and responding to LEA-identified areas of need, developing candidate selection criteria, and designing and implementing high-quality, needs-based clinical experiences.

(20) "Physical presence" means the entity has real estate and human capital within the boundaries of the state of Tennessee for the purpose of preparing educators.

(21) "SAP" means a Specialty Area Program that is a planned sequence of courses and experiences designed to provide educators with an additional, specific set of knowledge and skills or to expand and enhance an existing set of knowledge and skills.

(22) "State Board" means the Tennessee State Board of Education.

(23) "State recognized LEA partnership" means a partnership between an EPP and each LEA where enrolled candidates will complete any aspect of clinical experiences that has been submitted to the Department for recognition.

(24) "Stipulation" means findings that require an EPP to address identified deficiencies in order to meet standards and expectations.

(25) "Substantial change" means a variation from the original design that implements new requirements or expectations.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amended by Public Chapter No. 957 Acts of 1994; effective May 10, 1994. (See Attorney General Opinion No. 094-080). Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. However, notice of withdrawal of proposed amendment (2) filed August 3, 2009 and effective August 3, 2009 (to have been effective August 28, 2009). Repeal filed May 29, 2015; effective August 27, 2015.*

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0520-02-04-.03 Eligible Educator Preparation Providers

(1) Each EPP and SAP that leads to licensure shall be approved by the State Board.

(2) The following organizations are eligible to apply for State Board approval to serve as a Tennessee-approved EPP:

(a) A Southern Association of Colleges and Schools (SACS) accredited Tennessee-based Institution of Higher Education (IHE) authorized by the Tennessee Higher Education Commission (THEC);

(b) A Tennessee-based Education-Related Organization (ERO) with a physical presence in Tennessee;

(c) A Tennessee LEA or a consortium of Tennessee LEAs that have not received the lowest performance determination on the state's accountability model pursuant to T.C.A. § 49-1-602 in either of the two (2) most recent school years; or

(d) Out-of-state providers that hold approval in a state other than Tennessee and that meet the following conditions:

1. Identified recruitment and placement goals as a component of the primary partnership and a goal of recommending at least ten (10) candidates for

licensure in Tennessee per academic year. If at the point of review for full approval the provider has not met this goal, then the State Board may deny approval;

2. Demonstrated capacity to provide effective mentoring and supervision for all licensure candidates completing clinical experiences in Tennessee public or non-public schools;

3. Established selection criteria that meets or exceeds those minimum expectations established for Tennessee providers; and

4. The ability to clearly identify program candidates and completers as affiliated with Tennessee for all federal reporting requirements.

(3) Out-of-state providers that wish to operate in Tennessee without becoming a Tennessee-approved EPP based on approval from a state other than Tennessee shall submit to the Department a partnership agreement that includes at least one (1) LEA in Tennessee. If the partnership agreement meets the requirements of this Rule, these providers may implement a program approved in another state.

(4) Out-of-state providers are not eligible to become a Tennessee-approved provider for the preparation of instructional leaders.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. Repeal filed May 29, 2015; effective August 27, 2015.*

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0520-02-04-.04 Approval of Educator Preparation Providers

(1) Eligible organizations that wish to offer educator preparation programs in Tennessee must complete a two (2)-step approval process.

(a) The entity must receive initial approval by the State Board to begin serving as an EPP; and

(b) The EPP must undergo a comprehensive review to achieve full state approval to continue serving as an EPP within five (5) years of initial approval.

(2) Eligible organizations seeking initial approval as an EPP in order to prepare and recommend candidates for licensure shall participate in the initial approval process by submitting a proposal to the Department that contains, at a minimum, the following information:

(a) Evidence that the entity has the capacity to serve as an EPP and provide programs leading to licensure or endorsement;

(b) Evidence for how the EPP will address all applicable educator preparation standards approved by the State Board; including:

(1) Content and Pedagogical knowledge;

(2) Clinical partnerships and practice;

(3) Candidate quality, recruitment, and selectivity; and

(4) Provider quality assurance and continuous improvement.

(c) Geographic area to be served and documentation of the engagement of at least one (1) primary LEA partner;

(d) Plan for curriculum offerings including delivery method and timeframe, clinical placements, and clinical supervision plans;

(e) A proposal for each SAP that, at a minimum, includes alignment to Tennessee academic standards, candidate assessment, relevant clinical experience(s), the professional education standards approved by the State Board, all applicable literacy standards, and applicable specialty area standards approved by the State Board;

(f) Evidence that the faculty who teach courses or provide direct coaching to teacher or instructional leader candidates possess sufficient knowledge, skills, training, and expertise;

(g) A description of admissions procedures, including the criteria which must be met in order for a candidate to be fully admitted to the licensure program;

(h) Evidence of organizational and financial stability;

(i) Applicable provider characteristics, such as governance, control (private or public), regional accreditation agency, and THEC authorization; and

(j) If the provider is currently operating or has operated in Tennessee or any other state, data on program effectiveness, including but not limited to, completer effectiveness, quality of district partnerships, and performance on annual reports, if available.

(3) Proposals submitted for EPP initial approval shall be reviewed by the Department. After review of the proposal for initial approval, the Department shall recommend to the State Board one (1) of the following:

(a) Initial approval. If initial approval is awarded, providers may begin enrolling and subsequently recommending candidates for licensure in approved specialty areas; or

(b) Denial of initial approval. If initial approval is denied, providers may not recommend candidates for licensure or identify programs as leading to licensure. Providers may submit a revised proposal for consideration during the next review period.

(4) EPPs shall not publicize programs as leading to licensure prior to receiving initial approval.

(5) All EPPs that receive initial approval shall submit annual report data to the Department.

(6) Initial approval shall expire upon an EPP receiving full approval through the state-managed full-approval review or after five (5) years, whichever occurs first. If an EPP with initial approval has not received full approval within five (5) years, approval shall be revoked and the EPP may no longer enroll or recommend candidates for licensure.

(7) An EPP may seek full approval after three (3) years in operation under initial approval by requesting a state-managed full-approval review.

(8) Upon completion of the full-approval review, the Department shall recommend to the State Board one (1) of the following:

(a) Full approval. The EPP meets one (1) of the following statuses and may recommend candidates for licensure:

1. Exemplary status. The EPP exceeds expectations on a majority of the standards and meets expectations on all other standards.

2. Full approval. The EPP meets expectations on all standards.

3. Full approval, minor stipulations. The EPP meets expectations on all standards, but falls below expectations on one (1) or more components across multiple standards. The EPP shall submit to the Department a plan for addressing the areas in need of improvement within three (3) months of receiving full approval, minor stipulations. The Department shall annually review the EPP's progress on the submitted plan for improvement. If the EPP has adequately addressed the areas in need of improvement the Department may recommend to the State Board removal of the minor stipulations for the remainder of the approval period of the EPP. If within a three (3)-year period the Department determines the areas in need of improvement are not adequately addressed, the EPP may be required to participate in an interim review.

(b) Probationary approval, major stipulations. The EPP meets expectations on three (3) or more standards but falls below expectation on one (1) or more standard(s). An EPP that is issued probationary approval may recommend candidates for licensure but shall submit to the Department an improvement plan for addressing the areas in need of improvement within three (3) months of receiving probationary approval status from the State Board. Each year, the EPP shall present evidence that the provider is implementing the improvement plan and making progress toward meeting expectations. The EPP shall also participate in a focused review within three (3) years of receiving probationary approval from the State Board. The EPP shall not submit SAP proposals for conditional approval until the Department determines all deficiencies have been adequately addressed. The EPP shall specifically report on the progress made in each area of deficiency on their annual report for the three (3) years following the issuance of probationary approval.

(c) Denial of approval. The EPP falls below expectations on two (2) or more standards. EPPs that are denied approval shall no longer enroll new candidates for licensure and shall notify all current candidates of the denial of approval status of its program. Denied EPPs may continue to serve candidates who can complete the program by the end of the semester that falls twelve (12) months after the date of the denial of approval. The EPP shall assist candidates who are unable to complete the program within this period in transferring to another degree program at the institution or to another approved EPP. The EPP may not re-apply for initial approval for at least three (3) years from the date of denial.

(9) The State Board has final authority on all provider and program decisions related to educator preparation.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal filed May 29, 2015; effective August 27, 2015.*

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0520-02-04-.05 Approval of Specialty Area Programs

(1) An approved EPP that is seeking conditional approval of a new SAP or of an existing SAP that has undergone substantial revision shall submit a SAP proposal for administrative review to the Department that includes:

(a) A proposal for each SAP;

(b) Evidence of alignment to and integration of State Board approved applicable professional standards, applicable literacy standards, and applicable specialty area standards;

(c) Candidate assessment structure; and

(d) Requirements for clinical experiences, including at least one (1) type of clinical practice.

(2) An approved EPP may seek approval of a SAP that leads to one (1) or more endorsements

(3) After administrative review of the proposal, conditional SAP approval or denial of SAP approval shall be issued through Department notification. SAPs that are denied approval shall be provided an opportunity to resubmit the proposal to correct any identified deficiencies.

(4) After an SAP has received conditional approval, an EPP may enroll and subsequently recommend candidates for licensure in the approved specialty area. EPPs shall not advertise programs as leading to licensure prior to receiving conditional approval.

(5) After three (3) years of data is available for the conditionally approved SAP, it will be reviewed for full approval by the State Board during the EPP's next comprehensive review.

(6) In order for an SAP to receive full approval, it must meet the requirements and expectations outlined in the comprehensive review.

(7) If the SAP does not meet the requirements and expectations for full approval, then approval for the SAP may be denied by the State Board. If full approval is denied, then the EPP may not advertise the program as leading to licensure.

(8) Failure by an EPP to request a program review for a new SAP or an SAP that has undergone substantial change may result in its candidates being ineligible for licensure or endorsement.

(9) EPPs that wish to offer an instructional leader prep program shall submit a proposal to the Department that demonstrates alignment to the instructional leader preparation standards.

(10) EPPs may only recommend initial licensure candidates for endorsements that are part of an approved SAP.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed*

October 11, 1995; effective February 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed October 31, 2000; effective February 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Repeal filed May 29, 2015; effective August 27, 2015.

0520-02-04-.06 Program Requirements

(1) EPPs shall ensure that all programs that lead to licensure adequately address educator preparation standards, the professional education standards, all applicable literacy standards, and all applicable specialty area standards.

(2) EPPs shall ensure completers are prepared to deliver or lead instruction that enables students to master the Tennessee Academic Standards. Programs shall ensure that candidates master the content covered in the areas for which they are prepared to teach. EPPs shall align course work, clinical experiences, and candidate assessment systems to appropriate standards for each specialty area.

(3) All EPPs shall require that candidates demonstrate content knowledge in the specialty area program.

(4) EPPs shall provide training to support candidates' readiness to deliver or lead instruction informed by Response to Instruction and Intervention Framework (RTI²). Teacher candidates not seeking endorsement in Special Education shall be prepared to deliver instruction and intervention at the Tier I and II levels.

(5) EPPs shall provide training to support candidates' understanding of the state-approved educator evaluation framework.

(6) EPPs shall provide candidates training on the teacher code of ethics outlined in T.C.A. §§ 49-5-1001 through 49-5-1005 and the National Association of State Directors of Teacher Education and Certification's (NASDTEC) Model Code of Ethics for Educators.

(7) Pursuant to T.C.A. § 49-5-513, EPPs shall provide candidates with instruction on what is constitutionally permissible with teaching religious content and strategies for dealing with religious content in curriculum that are educationally sound, fair, neutral, and objective.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.*

0520-02-04-.07 Provider and Program Reviews and Annual Reports

(1) In order to maintain full state approval, EPPs shall participate in a comprehensive review every seven (7) years. EPPs may elect to pursue ongoing full state approval through a state-managed comprehensive review or a comprehensive review managed by an educator preparation

accrediting agency recognized by the Council for Higher Education Accreditation (CHEA) and the State Board.

(2) Each comprehensive review, either state-managed or managed by an educator preparation accrediting agency recognized by CHEA and the State Board, shall include, at a minimum, the following components:

(a) Prior to an EPP's comprehensive review, the Department shall evaluate data from the EPP's three (3) most recent annual reports.

(b) EPPs shall submit evidence demonstrating alignment to the educator preparation provider standards, the professional education standards, all applicable literacy standards, and all applicable specialty area standards approved by the State Board.

(c) A trained comprehensive review team shall be appointed for each EPP undergoing comprehensive review and shall be responsible for, at a minimum:

1. Reviewing all required evidence submitted by the EPP that demonstrates high quality implementation of:

(i) Content and pedagogical knowledge;

(ii) Clinical partnerships and practice;

(iii) Candidate quality, recruitment, and selectivity;

(iv) Program impact; and

(v) Provider quality assurance and continuous improvement;

2. Reviewing annual report data for the EPP from the applicable review cycle;

3. Conducting an on-site visit; and

4. Recommending an approval status to the Department.

(d) An Advisory Committee on Educator Preparation (ACEP) shall be appointed to review the recommendation of the review team and shall provide a preliminary recommendation for approval status to the Department.

(3) Following each comprehensive review, the Department shall recommend to the State Board one (1) of the following:

(a) Full approval. The EPP meets expectations on one (1) of the following statuses and may recommend candidates for licensure:

1. Full approval, exemplary status. The EPP exceeds expectations on a majority of the standards and meets expectations on all other standards and components.

2. Full approval. The EPP meets expectations on all standards.

3. Full approval, minor stipulations. The EPP meets expectations on all standards, but falls below expectations on one (1) or more components across multiple standards. The EPP must submit to the Department a plan for addressing the areas in need of improvement within three (3) months of receiving full approval, minor stipulations . The Department shall annually review the EPP's progress on

the submitted plan for improvement. If the EPP has adequately addressed the areas in need of improvement the Department may recommend to the State Board removal of the minor stipulations for the remainder of the approval period of the EPP. If within a three (3)-year period the Department determines the areas in need of improvement are not adequately addressed, then the EPP may be required to participate in an interim review.

(b) Probationary approval, major stipulations. The EPP meets expectations on three (3) or more standards but falls below expectation on one (1) or more standard(s). An EPP that is issued probationary approval may recommend candidates for licensure but shall submit to the Department an improvement plan for addressing the areas in need of improvement within three (3) months of receiving probationary approval status from the State Board. Each year, the EPP shall present evidence that the provider is implementing the improvement plan and making progress toward meeting expectations. The EPP shall also participate in a focused review within three (3) years of receiving probationary approval from the State Board. The EPP shall not submit SAP proposals for conditional approval until the Department determines all deficiencies have been adequately addressed. The EPP shall specifically report on the progress made in each area of deficiency on their annual report for the three (3) years following the issuance of probationary approval.

(c) Denial of approval. The EPP falls below expectations on two (2) or more standards. EPPs that are denied approval shall no longer enroll new candidates for licensure and shall notify all current candidates of the denial of approval status of its program. Denied EPPs may continue to serve candidates who can complete the program by the end of the semester that falls twelve (12) months after the date of the denial of approval. The EPP shall assist candidates who are unable to complete the program within this period in transferring to another degree program at the institution or to another approved EPP. The EPP may not re-apply for conditional approval for at least three (3) years from the date of denial.

(4) The Department shall manage an interim review process for EPPs or individual SAPs that have been identified as performing below expectations on the annual report for a minimum of two (2) consecutive years at any point. The Department may manage an interim review process for EPPs with initial approval that perform below expectations as reported on the annual report at any point during the initial approval period. Following an interim review, the Department may make a recommendation for approval status change, including denial of approval, to the State Board.

(5) The Department shall manage a focused review process for EPPs or individual SAPs that receive probationary approval based on the comprehensive review. The Department shall appoint a review team responsible for reviewing the EPP's progress on implementation of the required improvement plan. As a result of a focused review, the Department may make an approval status change recommendation, including denial of approval, to the State Board.

(6) If an EPP refuses to participate in any required review, the Department may make a recommendation for approval status change, including denial of approval, to the State Board.

(7) EPPs shall annually submit to the Department the following:

(a) Any substantial changes to the approved EPP or SAP(s), including changes to accreditation status, parent organization, primary partnerships, the requirements for selection, structure of the program of study, clinical requirements, or candidate assessment systems;

(b) Contact information, including primary contact information and verification of the designated head of the EPP and approved certification or licensure officers; and

(c) Progress reports addressing any stipulations, including all required focused or interim reviews, identified in the most recent comprehensive review, if applicable.

(8) Each EPP shall annually verify or submit all information identified by the Department for inclusion in an annual report. Annual reports provide evidence of performance of the provider and SAP or clusters of SAPs and shall include, at a minimum, the following:

(a) Metrics related to recruitment and selection of candidates, such as selectivity characteristics;

(b) Goals related to the recruitment and program retention of candidates from underrepresented demographics including race, ethnicity, and sex;

(c) Information on completer and job-embedded candidate employment in qualifying positions in Tennessee public schools;

(d) Completer and job-embedded candidate retention in Tennessee public schools following initial employment;

(e) Results from a program completer satisfaction survey;

(f) Results from an employer satisfaction survey administered to all primary partner LEAs and any LEA employing more than twenty-five percent (25%) of the program completer cohort;

(g) Completer outcomes including, but not limited to, program completion rates and pass rates on required licensure assessments;

(h) Job-embedded candidate outcomes, if applicable, including but not limited to pass rates on required licensure assessments; and

(i) Completer and job-embedded candidate impact as measured by components of an approved Tennessee educator evaluation model including, but not limited to, overall levels of effectiveness, observation scores, and individual growth scores.

(9) EPPs with approved instructional leader preparation programs shall annually verify or submit all information identified by the Department for inclusion in the annual report. The Department shall, at a minimum, include the following ILPP metrics in the annual report:

(a) Metrics related to recruitment and selection;

(b) Information on employment and retention, including the percentage of completers employed in a qualifying instructional leadership position and the percentage of completers retained in a qualifying instructional leadership position after initial employment as a leader;

(c) Results from a program completer satisfaction survey;

(d) Results from an employer satisfaction survey administered to all primary partner LEAs;

(e) Completer outcomes including, but not limited to, program completion rates and pass rates on required licensure assessments; and

(f) Completer impact as measured by components of an approved Tennessee educator evaluation model.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed November 22, 1993; effective March 30, 1994. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed February 20, 2008; effective June 27, 2008. Repeal filed May 29, 2015; effective August 27, 2015.*

0520-02-04-.08 Admission to Educator Preparation Programs

(1) Candidates for admission to a baccalaureate level educator preparation program shall, at a minimum, meet the following criteria:

(a) A minimum postsecondary grade point average (GPA) of 2.75 at the time of admission to the EPP;

(b) A qualifying score on the Praxis Core, ACT or SAT assessment defined in the State Board's Educator Preparation Policy; and

(c) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI) in accordance with T.C.A. § 49-5-5610.

(2) Candidates for admission to a post-baccalaureate educator preparation program shall, at a minimum, meet the following criteria:

(a) Evidence of a bachelor's degree or higher from a regionally accredited IHE;

(b) A minimum overall GPA of 2.75 from a completed baccalaureate or post-baccalaureate degree program or a GPA of 3.00 in the most recent sixty (60) credit hours earned at a regionally accredited IHE;

(c) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI) in accordance with T.C.A. § 49-5-5610; and

(d) For admission to programs that include job-embedded clinical practice, a degree with a major in the specialty area or qualifying scores on the required content assessment defined in the State Board's Professional Assessments for Tennessee Educators Policy.

(3) Candidates for admission to an ILPP shall, at a minimum, meet the following criteria:

(a) Have successfully completed an educator preparation program and hold a valid teacher license from Tennessee or from a state other than Tennessee;

(b) Have at least two (2) years of qualifying education experience as defined by the Department;

(c) Have demonstrated effectiveness as an educator in the most recent two (2) years as evidenced by a state-approved evaluation model or similar measure for educators employed in schools that do not utilize a state-approved evaluation model;

(d) Have demonstrated leadership potential in accordance with guidelines developed by the Department; and

(e) Be recommended by an LEA and participate in an interview conducted by a program admissions committee.

(4) EPPs may establish additional or more rigorous admission requirements than the state minimum requirements, provided they are in compliance with all state and federal laws, rules, and regulations.

(5) To admit candidates on appeal, EPPs must submit an admissions appeal procedure process to the Department for approval. If the Department denies an admissions appeal procedure process, the EPP shall not admit candidates on appeal. Each EPP with an approved admission appeal procedure shall report to the Department the names, academic qualifications, and basis on which candidates were admitted on appeals each year.

(6) Each EPP shall report to the Department each candidate admitted to the educator preparation program and identify each candidate admitted on appeal.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Repeal filed May 29, 2015; effective August 27, 2015.*

0520-02-04-.09 Partnerships

(1) All EPPs shall have a partnership with each LEA where enrolled candidates are placed for clinical experiences.

(2) Each Tennessee-based EPP shall have at least one (1) primary partnership with an LEA in which both parties collaborate to establish an explicit process for identifying and responding to LEA-identified areas of need, developing candidate selection criteria, and designing and implementing high-quality, needs-based clinical experiences. The primary partnership shall also establish the roles and responsibilities of EPP faculty and LEA staff, including clinical mentors and supervisors and establish clear expectations regarding the delivery of candidate support and evaluation.

(3) Tennessee-based EPPs that meet the following requirements may request to establish a primary partnership with an alternate entity that oversees or manages two (2) or more schools in Tennessee:

(a) The most recent completer cohort has ten (10) or fewer educators employed in a Tennessee public school; and

(b) The EPP provides a description of how the partnership will comply with the requirements of paragraph 2.

(4) All EPPs shall establish state-recognized partnerships with LEAs with which they do not have a primary partnership, but where enrolled candidates are placed for clinical experiences. State-recognized partnerships, at a minimum, shall establish the roles and responsibilities of EPP faculty and LEA staff, including clinical mentors and supervisors and establish clear expectations regarding the delivery of candidate support and evaluation.

(5) Out-of-state and online EPPs that place candidates in Tennessee LEAs for clinical experiences shall have formal state-recognized partnership agreements with the LEAs hosting their

candidates. This includes placement of candidates who are employed as teachers-of-record while completing preparation programs through the job embedded clinical practice option. Out-of-state and online EPPs must submit LEA partnership agreements to the Department in order to receive partnership recognition from the state.

(6) Pursuant to T.C.A. § 49-5-5631, all full-time faculty members, including academic deans or executive leaders, in a Tennessee approved EPP, who are involved in the preparation of teachers, shall further their professional development through direct personal involvement in a public school or LEA on an annual basis. Each primary partnership agreement shall detail the faculty involvement. Direct faculty involvement shall include at least one (1) of the following activities:

(a) Professional learning targeted to or led by pre-K through grade twelve (pre-K–12) educators;

(b) Professional learning focused on local education agency-specific educational initiatives;

(c) Direct instruction to pre-K through grade twelve (pre-K–12) students;

(d) Curriculum development;

(e) District level strategic partnerships; or

(f) Direct observation of pre–K through grade twelve (pre-K–12) classrooms.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendments filed September 6, 2007; effective January 28, 2008. Amendment filed February 20, 2008; effective June 27, 2008. Amendment filed October 20, 2009; effective March 31, 2010. Repeal filed May 29, 2015; effective August 27, 2015.*

0520-02-04-.10 Clinical Experiences

(1) Each EPP shall provide candidates with clinical experiences. EPPs shall design these experiences to provide candidates with opportunities to build and demonstrate content knowledge, pedagogical knowledge, and pedagogical content knowledge. These experiences shall reflect the breadth of the grade span and the depth of the content reflected by the specialty area(s) in which the candidate is being prepared.

(2) Each candidate shall complete field experiences and at least one (1) clinical practice in order to successfully complete an educator preparation program.

(3) EPPs shall ensure candidates complete a clinical practice in the appropriate licensure and endorsement area.

(4) Field experiences shall provide early and ongoing practice opportunities to apply content and pedagogical knowledge in settings reflective of the specialty area(s) in which the candidate is being prepared.

(5) EPPs shall develop requirements for completion of clinical practice and outline the causes and procedures by which the clinical practice can be terminated. Candidates who do not successfully complete clinical practice shall not be recommended for licensure.

(6) Prior to participating in a clinical practice, post-baccalaureate program candidates shall receive training on the professional education standards.

(7) Clinical practice sites may include Tennessee public schools, including public charter schools and Tennessee state special schools, or Category 1 non-public schools. Category 2 or Category 3 non-public schools may serve as placement sites for no more than half of the candidate's clinical practice. Category 4 and 5 schools shall not be used as placement sites. These categories are defined in State Board Rule 0520-07-02. If extraordinary circumstances arise that prevent a candidate from completing the clinical experience in Tennessee, the EPP may request permission for the candidate to complete the clinical practice in another state, provided the candidate has completed all course requirements of the preparation program with the exception of the clinical practice. Information of candidates that complete the clinical practice outside of Tennessee shall be included on the annual report.

(8) EPPs shall ensure all candidates participating in a clinical practice have a school-based clinical mentor.

(9) Educators who serve as a school-based clinical mentor in a public school setting shall, at a minimum:

(a) Hold an active Tennessee license with an endorsement in the area or a closely related area where they will be supervising the candidate;

(b) Have a level of overall effectiveness of above expectations or significantly above expectations for the prior school year; and

(c) Have a minimum of three (3) years of experience as a teacher, school services personnel, or instructional leader, as applicable.

(10) Clinical mentors shall be selected jointly by the EPP and the partner LEA.

(11) Clinical mentors shall, in cooperation with the EPP clinical supervisor, direct the activities of the candidate in the classroom.

(12) EPPs shall coordinate with LEAs to ensure clinical mentors are provided release time for counseling, observation, evaluation, or other activities related to the clinical practice that occur during the school day.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Repeal filed May 29, 2015; effective August 27, 2015.*

~~RULES~~

~~OF~~

~~THE STATE BOARD OF EDUCATION~~

~~CHAPTER 0520-02-04~~

~~EDUCATOR PREPARATION~~

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~~0520-02-04-.01 GENERAL INFORMATION AND REGULATIONS.~~

~~(1) All educator preparation providers and the licensure programs they offer must be approved by the State Board of Education. Approval shall be awarded based on policies established by the State Board of Education.~~

~~(2) Licensure programs may be offered by Tennessee institutions of higher education, Tennessee local education agencies, education-related organizations, or the Tennessee Department of Education.~~

~~(3) All approved educator preparation providers offered by Tennessee institutions of higher education and education-related organizations must establish and document a collaborative partnership with at least one Tennessee local education agency. Requirements for this partnership are defined in State Board of Education policy.~~

(4) Licensure programs, which are conditionally or fully approved by the State Board of Education according to State Board of Education Policy, will be eligible to prepare and recommend candidates for licensure.

(5) Educator preparation providers must identify the area(s) of endorsement, for which the candidate is recommended, when the licensure application is submitted. Eligibility for endorsement areas are defined in State Board of Education policy.

(6) Educator preparation providers that offer programs for additional endorsements shall submit to the Tennessee Department of Education a list of specialty areas in which additional endorsements are offered. Providers will verify completion of the appropriate course requirements to the Tennessee Department of Education.

Authority: *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed October 11, 1995; effective February 28, 1995. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed June 30, 2005; effective October 28, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed July 31, 2008; effective November 28, 2008. Amendment filed September 23, 2008; effective January 28, 2009. Amendments filed April 30, 2009; effective August 28, 2009. Amendments filed December 19, 2012; effective May 31, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendment filed July 23, 2014; effective October 20, 2014. Repeal and new rule 0520-02-04-.01 filed May 29, 2015; effective August 27, 2015. Amendment of rule 0520-02-04-(9)(a) filed May 29, 2015; effective August 27, 2015. On July 30, 2015, the State Board of Education filed a withdrawal of the rule 0520-02-04-(9)(a).*

0520-02-04-.02 TYPES OF LICENSES AND CERTIFICATES.

Authority: T.C.A. §§ 49-1-302, 49-5-101, 49-5-108 and 49-5-5201. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amended by Public Chapter No. 957 Acts of 1994; effective May 10, 1994. (See Attorney General Opinion No. 094-080). Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. However, notice of withdrawal of proposed amendment (2) filed August 3, 2009 and effective August 3, 2009 (to have been effective August 28, 2009). Repeal filed May 29, 2015; effective August 27, 2015.

0520-02-04-.03 THE TRANSITIONAL LICENSE, Interim Licenses, and Permits.

~~Authority: T.C.A. §§ 49-1-302, 49-5-101, and 49-5-108. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.04 APPLICATION FOR THE TEACHER LICENSE.~~

~~Authority: T.C.A. §§ 49-1-302, 49-5-101 and 49-5-108. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.05 THE PRAXIS SERIES: PROFESSIONAL ASSESSMENTS FOR BEGINNING TEACHERS.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-5605.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed October 31, 2000; effective February 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.06 RESERVED.~~

~~0520-02-04-.07 REQUIREMENTS FOR ENDORSEMENTS, GRADES K-8, ON A TEACHER LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108. (Public Chapter No. 535 - Education Improvement Act).* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed November 22, 1993; effective March 30, 1994. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed February 20, 2008; effective June 27, 2008 Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.08 RESERVED.~~

~~***Authority:*** *T.C.A. §§49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.09 REQUIREMENTS FOR ENDORSEMENTS, GRADES 7-12, ON A TEACHER LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-202, 49-1-302, 49-1-302(15), 49-1-302(16) and 49-5-108. (Public Chapter No. 535 - Education Improvement Act).* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendments filed September 6, 2007; effective January 28, 2008. Amendment filed February 20, 2008; effective June 27, 2008. Amendment filed October 20, 2009; effective March 31, 2010. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.10 REQUIREMENTS FOR ENDORSEMENTS, GRADES K-12, ON A TEACHER LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.11 RESERVED.~~

~~0520-02-04-.12 REQUIREMENTS FOR THE PROFESSIONAL SCHOOL SERVICE PERSONNEL LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed November 22, 1993; effective March 30, 1994. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed December 31, 2001; effective April 30, 2002. Amendments filed May 19, 2005; effective September 28, 2005. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.13 REQUIREMENTS FOR THE OCCUPATIONAL EDUCATION LICENSE.~~

~~***Authority:*** *T.C.A. §§49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed June 11, 2007; effective October 25, 2007. Amendment filed January 20, 2012; effective June 30, 2012. Amendments filed February 6, 2013; effective July 29, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendments filed May 8, 2014; effective October 29, 2014. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.14 RENEWAL OF TEACHER LICENSES.~~

~~***Authority:*** *§ 49-1-302.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed June 11, 2007; effective October 25, 2007. Amendment filed March 24, 2014; effective August 29, 2014. Withdrawal of the March 24, 2014 amendment filed July 10, 2014 by the State Board of Education. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.15 RENEWAL OF ADMINISTRATOR LICENSES.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed November 3, 1993; effective March 30, 1994. Amendment filed May 28, 1999; effective September 28, 1999. Repeal filed May 29, 2015; effective August 27, 2015~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Lillian Hartgrove	X				
Gordon Ferguson	X				
Elissa Kim	X				
Mike Edwards	X				
Bob Eby	X				
Wendy Tucker	X				
Nick Darnell				X	
Darrell Cobbins				X	

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: 1/15/2019

Signature: Angela C Sanders

Name of Officer: Angie Sanders

Title of Officer: General Counsel

Subscribed and sworn to before me on: January 15, 2019

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

Agency/Board/Commission: TN State Board of Education

Rule Chapter Number(s): 0520-02-04

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

1/28/2019
Date

Department of State Use Only

Filed with the Department of State on: 1/28/19

Effective for: 180 *days

Effective through: 7/27/19

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett
Tre Hargett
Secretary of State

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2019 JAN 28 PM 3:35
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Educator Preparation
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-1-302(a)(11), 49-5-101(e), 49-5-108(a)(1), 49-5-108(c), and 49-5-108(d)(1)
EFFECTIVE DATES:	April 28, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	All Educator Preparation Providers (EPPs, such as a college or university) and the Specialty Area Programs (SAP) that lead to licensure shall be approved by the State Board of Education (SBE). This rulemaking hearing rule is a follow-up to the emergency rule on the same subject, presents an updated, comprehensive revision of the educator preparation rule that governs the approval of EPP and SAP programs, including how EPPs may apply and be evaluated for initial and continuing approval from the SBE to prepare teachers and other school personnel for licensure. All licensure programs must ensure that candidates have opportunities to attain the knowledge and skills specified by the SBE, have clinical experiences in accordance with guidelines established by the SBE and the Department, and meet other standards, procedures, and guidelines established by the SBE.

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.

Please see attached.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

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 does not have a projected 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;

All Educator Preparation Providers (EPPs, such as a college or university) and the Specialty Area Programs (SAP) that lead to licensure shall be approved by the State Board of Education (SBE). This rule change presents an updated, comprehensive revision of the educator preparation rule that governs the approval of EPP and SAP programs, including how EPPs may apply and be evaluated for initial and continuing approval from the SBE to prepare teachers and other school personnel for licensure. All licensure programs must ensure that candidates have opportunities to attain the knowledge and skills specified by the SBE, have clinical experiences in accordance with guidelines established by the SBE and the Department, and meet other standards, procedures, and guidelines established by the SBE.

(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;

T.C.A. § 49-1-302(a)(11) - Approve, disapprove, or amend rules and regulations prepared by the Commissioner to implement policies, standards, or guidelines of the Board in order to effectuate this section.

T.C.A. § 49-5-101(e) - The State Board of Education shall not issue professional licenses upon the work done in any college or university, except from a list of standard teacher-training institutions, colleges and universities that shall be approved by the state board of education after inspection as may be provided by the board.

T.C.A. § 49-5-108 (a)(1) - Complete jurisdiction over the issuance and administration of licenses for supervisors, principals and public school teachers for kindergarten through grade twelve (K-12), including teachers in preschools operated under the authority of chapter 6, part 1 of this title, shall be vested in the State Board of Education.

T.C.A. § 49-5-108 (c) - The State Board of Education is authorized, empowered and directed to set up rules and regulations governing the issuance of licenses for supervisors, principals and public school teachers.

T.C.A. § 49-5-108(d)(1) - The State Board of Education has the authority to promulgate rules and regulations prescribing minimum standards for licenses and certificates differing from the requirements prescribed in this chapter.

(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;

Educator preparation providers and students enrolled in educator preparation programs are most directly affected by this rule. Besides the public comments received in favor of the rule at the rulemaking hearing, neither has urged adoption or rejection of this rule.
The Tennessee Department of Education is also directly affected by this rule and urges adoption of the rule.
The State Board of Education urges adoption of this rule.

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

Bethel University v. Tennessee State Board of Education, et al., 2018 WL 3860750 (Tenn. Ct. App. Aug. 14, 2018)

(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;

N/A

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(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

Angie Sanders
Angela.C.Sanders@tn.gov
1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
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(615) 253-5707

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

N/A

RESPONSE TO COMMENTS RECEIVED AT RULEMAKING HEARING

The Tennessee State Board of Education held a public rulemaking hearing on the the permanent rule 0520-02-04 of the Tennessee State Board of Education, Educator Preparation. The hearing was held on December 21, 2018, at 8:00 a.m. in the Multipurpose Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243. The State Board also collected written feedback about the proposed revisions.

Public comment was received from Western Governor's University at the public hearing whereby they expressed support for the revised language of the rule, and suggested no changes.

Written feedback received from Aquinas College related to the requirement in the rule that Educator Preparation Programs (EPPs) are required to establish a primary partnership with an LEA. Aquinas provided feedback that its small catholic EPP focuses on preparing Sisters, the majority of which end up employed in Catholic schools rather than an LEA. Their request was that the rule language be amended to allow programs such as theirs to be able to establish a primary partnership with an alternate entity, such as the Catholic diocese.

In response, changes were made in 0520-02-04-.09 (3) to allow small EPP programs such as Aquinas to request to establish a primary partnership with an alternate entity that meets certain requirements.

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For Department of State Use Only

Sequence Number: 01-27-19
Rule ID(s): 8525
File Date: 1/28/19
Effective Date: 4/28/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Angie Sanders
Address:	Andrew Johnson Tower, 1st Floor
Zip:	710 James Robertson Pkwy
Phone:	37243
Email:	(615) 253-5707

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-02-04	Educator Preparation
Rule Number	**Rule Title**
0520-02-04-.01	Scope of Rules
0520-02-04-.02	Definitions
0520-02-04-.03	Eligible Educator Preparation Providers
0520-02-04-.04	Approval of Educator Preparation Providers
0520-02-04-.05	Approval of Specialty Area Programs
0520-02-04-.06	Program Requirements
0520-02-04-.07	Provider & Program Reviews and Annual Reports
0520-02-04-.08	Admission to Educator Preparation Program
0520-02-04-.09	Partnerships
0520-02-04-.10	Clinical Experiences

RULES OF

THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-04

EDUCATOR PREPARATION

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0520-02-04-.09 Partnerships
0520-02-04-.10 Clinical Experiences

0520-02-04-.01 Scope of Rules

All educator preparation providers and the specialty area programs they offer must be approved by the State Board of Education (State Board). All educator preparation providers and specialty area programs currently approved as of January 8, 2019 under the State Board Educator Preparation Policy shall maintain their current approval status and shall be subject to all requirements under this Rule. All qualifying organizations or specialty area programs not currently approved by the State Board as of January 8, 2019 shall be considered for approval under this Rule.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed June 30, 2005; effective October 28, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed July 31, 2008; effective November 28, 2008. Amendment filed September 23, 2008; effective January 28, 2009. Amendments filed April 30, 2009; effective August 28, 2009. Amendments filed December 19, 2012; effective May 31, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendment filed July 23, 2014; effective October 20, 2014. Repeal and new rule 0520-02-04-.01 filed May 29, 2015; effective August 27, 2015. Amendment of rule 0520-02-04 (9)(a) filed May 29, 2015; effective August 27, 2015. On July 30, 2015, the State Board of Education filed a withdrawal of the rule 0520-02-04 (9)(a).*

0520-02-04-.02 Definitions

(1) "Annual report" means detailed, candidate-level data for each Educator Preparation Provider (EPP) compiled each year. Annual reports provide evidence of EPP effectiveness and are used for ongoing approval.

(2) "Candidate" means an individual enrolled in an educator preparation program that has been approved by the State Board.

(3) "Clinical experiences" means guided, hands-on, practical applications and demonstrations of professional knowledge of theory to practice, skills, and dispositions through collaborative and

facilitated learning in field-based assignments, tasks, activities, and assessments across a variety of settings.

(4) "Clinical practice" means student teaching, internship, or job embedded opportunities that provide candidates with sustained school-based responsibilities, assignments, tasks, and assessments that allow a candidate to demonstrate the professional knowledge, skills, and dispositions to be an effective educator.

(5) "Completer" means an individual who has completed the requirements of an educator preparation program that has been approved by the State Board.

(6) "Comprehensive review" means the review that each EPP must complete every seven (7) years in order to maintain state approval.

(7) "Conditional approval" means the provider or specialty area program has met preconditions and demonstrated alignment to all appropriate standards and expectations. The provider or specialty area program has not yet been reviewed for the purpose of obtaining full approval.

(8) "Department" means the Tennessee Department of Education.

(9) "Endorsement Area" means the subject and/or grade level for which a licensed educator is prepared to provide instruction, leadership, or services in schools or districts. When applying for licensure, each teacher candidate must meet requirements in at least one (1) area of endorsement.

(10) "EPP" means an Educator Preparation Provider responsible for managing, operating, or coordinating programs for the preparation and licensure of teachers and other school personnel that has been approved by the State Board.

(11) "ERO" means a Tennessee-based Education-Related Organization.

(12) "Focused review" means a review of an EPP that is triggered when an EPP does not meet one (1) or more standards during the comprehensive review.

(13) "Full approval" means the approval status of an EPP that has met the requirements for initial approval, been approved by the State Board, has participated in the annual review process each year, and has undergone a comprehensive review every seven (7) years.

(14) "IHE" means an Institution of Higher Education.

(15) "Initial approval" means the first step of approval for new EPPs. The initial approval period shall last for a minimum of three (3) years and a maximum of five (5) years.

(16) "Instructional Leader Preparation Program (ILPP)" means a program that is approved for the preparation of school leaders.

(17) "Interim review" means a review of an EPP or an individual SAP that is triggered by performance that is below expectations on the annual report for a minimum of two (2) consecutive years.

(18) "LEA" means a Tennessee Local Education Agency.

(19) "Primary LEA partnership" means a partnership between an EPP and one (1) or more LEAs in which both parties collaborate to establish an explicit process for identifying and responding to LEA-identified areas of need, developing candidate selection criteria, and designing and implementing high-quality, needs-based clinical experiences.

(20) "Physical presence" means the entity has real estate and human capital within the boundaries of the state of Tennessee for the purpose of preparing educators.

(21) "SAP" means a Specialty Area Program that is a planned sequence of courses and experiences designed to provide educators with an additional, specific set of knowledge and skills or to expand and enhance an existing set of knowledge and skills.

(22) "State Board" means the Tennessee State Board of Education.

(23) "State recognized LEA partnership" means a partnership between an EPP and each LEA where enrolled candidates will complete any aspect of clinical experiences that has been submitted to the Department for recognition.

(24) "Stipulation" means findings that require an EPP to address identified deficiencies in order to meet standards and expectations.

(25) "Substantial change" means a variation from the original design that implements new requirements or expectations.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amended by Public Chapter No. 957 Acts of 1994; effective May 10, 1994. (See Attorney General Opinion No. 094-080). Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. However, notice of withdrawal of proposed amendment (2) filed August 3, 2009 and effective August 3, 2009 (to have been effective August 28, 2009). Repeal filed May 29, 2015; effective August 27, 2015.*

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0520-02-04-.03 Eligible Educator Preparation Providers

(1) Each EPP and SAP that leads to licensure shall be approved by the State Board.

(2) The following organizations are eligible to apply for State Board approval to serve as a Tennessee-approved EPP:

(a) A Southern Association of Colleges and Schools (SACS) accredited Tennessee-based Institution of Higher Education (IHE) authorized by the Tennessee Higher Education Commission (THEC);

(b) A Tennessee-based Education-Related Organization (ERO) with a physical presence in Tennessee;

(c) A Tennessee LEA or a consortium of Tennessee LEAs that have not received the lowest performance determination on the state's accountability model pursuant to T.C.A. § 49-1-602 in either of the two (2) most recent school years; or

(d) Out-of-state providers that hold approval in a state other than Tennessee and that meet the following conditions:

1. Identified recruitment and placement goals as a component of the primary partnership and a goal of recommending at least ten (10) candidates for

licensure in Tennessee per academic year. If at the point of review for full approval the provider has not met this goal, then the State Board may deny approval;

2. Demonstrated capacity to provide effective mentoring and supervision for all licensure candidates completing clinical experiences in Tennessee public or non-public schools;

3. Established selection criteria that meets or exceeds those minimum expectations established for Tennessee providers; and

4. The ability to clearly identify program candidates and completers as affiliated with Tennessee for all federal reporting requirements.

(3) Out-of-state providers that wish to operate in Tennessee without becoming a Tennessee-approved EPP based on approval from a state other than Tennessee shall submit to the Department a partnership agreement that includes at least one (1) LEA in Tennessee. If the partnership agreement meets the requirements of this Rule, these providers may implement a program approved in another state.

(4) Out-of-state providers are not eligible to become a Tennessee-approved provider for the preparation of instructional leaders.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. Repeal filed May 29, 2015; effective August 27, 2015.*

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0520-02-04-.04 Approval of Educator Preparation Providers

(1) Eligible organizations that wish to offer educator preparation programs in Tennessee must complete a two (2)-step approval process:

(a) The entity must receive initial approval by the State Board to begin serving as an EPP; and

(b) The EPP must undergo a comprehensive review to achieve full state approval to continue serving as an EPP within five (5) years of initial approval.

(2) Eligible organizations seeking initial approval as an EPP in order to prepare and recommend candidates for licensure shall participate in the initial approval process by submitting a proposal to the Department that contains, at a minimum, the following information:

(a) Evidence that the entity has the capacity to serve as an EPP and provide programs leading to licensure or endorsement.

(b) Evidence for how the EPP will address all applicable educator preparation standards approved by the State Board, including:

(1) Content and Pedagogical knowledge;

(2) Clinical partnerships and practice;

(3) Candidate quality, recruitment, and selectivity; and

(4) Provider quality assurance and continuous improvement.

(c) Geographic area to be served and documentation of the engagement of at least one (1) primary LEA partner;

(d) Plan for curriculum offerings including delivery method and timeframe, clinical placements, and clinical supervision plans;

(e) A proposal for each SAP that, at a minimum, includes alignment to Tennessee academic standards, candidate assessment, relevant clinical experience(s), the professional education standards approved by the State Board, all applicable literacy standards, and applicable specialty area standards approved by the State Board;

(f) Evidence that the faculty who teach courses or provide direct coaching to teacher or instructional leader candidates possess sufficient knowledge, skills, training, and expertise;

(g) A description of admissions procedures, including the criteria which must be met in order for a candidate to be fully admitted to the licensure program;

(h) Evidence of organizational and financial stability;

(i) Applicable provider characteristics, such as governance, control (private or public), regional accreditation agency, and THEC authorization; and

(j) If the provider is currently operating or has operated in Tennessee or any other state, data on program effectiveness, including but not limited to, completer effectiveness, quality of district partnerships, and performance on annual reports, if available.

(3) Proposals submitted for EPP initial approval shall be reviewed by the Department. After review of the proposal for initial approval, the Department shall recommend to the State Board one (1) of the following:

(a) Initial approval. If initial approval is awarded, providers may begin enrolling and subsequently recommending candidates for licensure in approved specialty areas; or

(b) Denial of initial approval. If initial approval is denied, providers may not recommend candidates for licensure or identify programs as leading to licensure. Providers may submit a revised proposal for consideration during the next review period.

(4) EPPs shall not publicize programs as leading to licensure prior to receiving initial approval.

(5) All EPPs that receive initial approval shall submit annual report data to the Department.

(6) Initial approval shall expire upon an EPP receiving full approval through the state-managed full-approval review or after five (5) years, whichever occurs first. If an EPP with initial approval has not received full approval within five (5) years, approval shall be revoked and the EPP may no longer enroll or recommend candidates for licensure.

(7) An EPP may seek full approval after three (3) years in operation under initial approval by requesting a state-managed full-approval review.

(8) Upon completion of the full-approval review, the Department shall recommend to the State Board one (1) of the following:

(a) Full approval. The EPP meets one (1) of the following statuses and may recommend candidates for licensure:

1. Exemplary status. The EPP exceeds expectations on a majority of the standards and meets expectations on all other standards.

2. Full approval. The EPP meets expectations on all standards.

3. Full approval, minor stipulations. The EPP meets expectations on all standards, but falls below expectations on one (1) or more components across multiple standards. The EPP shall submit to the Department a plan for addressing the areas in need of improvement within three (3) months of receiving full approval, minor stipulations. The Department shall annually review the EPP's progress on the submitted plan for improvement. If the EPP has adequately addressed the areas in need of improvement the Department may recommend to the State Board removal of the minor stipulations for the remainder of the approval period of the EPP. If within a three (3)-year period the Department determines the areas in need of improvement are not adequately addressed, the EPP may be required to participate in an interim review.

(b) Probationary approval, major stipulations. The EPP meets expectations on three (3) or more standards but falls below expectation on one (1) or more standard(s). An EPP that is issued probationary approval may recommend candidates for licensure but shall submit to the Department an improvement plan for addressing the areas in need of improvement within three (3) months of receiving probationary approval status from the State Board. Each year, the EPP shall present evidence that the provider is implementing the improvement plan and making progress toward meeting expectations. The EPP shall also participate in a focused review within three (3) years of receiving probationary approval from the State Board. The EPP shall not submit SAP proposals for conditional approval until the Department determines all deficiencies have been adequately addressed. The EPP shall specifically report on the progress made in each area of deficiency on their annual report for the three (3) years following the issuance of probationary approval.

(c) Denial of approval. The EPP falls below expectations on two (2) or more standards. EPPs that are denied approval shall no longer enroll new candidates for licensure and shall notify all current candidates of the denial of approval status of its program. Denied EPPs may continue to serve candidates who can complete the program by the end of the semester that falls twelve (12) months after the date of the denial of approval. The EPP shall assist candidates who are unable to complete the program within this period in transferring to another degree program at the institution or to another approved EPP. The EPP may not re-apply for initial approval for at least three (3) years from the date of denial.

(9) The State Board has final authority on all provider and program decisions related to educator preparation.

Authority: T.C.A. §§ 49-1-302, 49-5-101, 49-5-108. ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal filed May 29, 2015; effective August 27, 2015.*

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0520-02-04-.05 Approval of Specialty Area Programs

(1) An approved EPP that is seeking conditional approval of a new SAP or of an existing SAP that has undergone substantial revision shall submit a SAP proposal for administrative review to the Department that includes:

(a) A proposal for each SAP;

(b) Evidence of alignment to and integration of State Board approved applicable professional standards, applicable literacy standards, and applicable specialty area standards;

(c) Candidate assessment structure; and

(d) Requirements for clinical experiences, including at least one (1) type of clinical practice.

(2) An approved EPP may seek approval of a SAP that leads to one (1) or more endorsements

(3) After administrative review of the proposal, conditional SAP approval or denial of SAP approval shall be issued through Department notification. SAPs that are denied approval shall be provided an opportunity to resubmit the proposal to correct any identified deficiencies.

(4) After an SAP has received conditional approval, an EPP may enroll and subsequently recommend candidates for licensure in the approved specialty area. EPPs shall not advertise programs as leading to licensure prior to receiving conditional approval.

(5) After three (3) years of data is available for the conditionally approved SAP, it will be reviewed for full approval by the State Board during the EPP's next comprehensive review.

(6) In order for an SAP to receive full approval, it must meet the requirements and expectations outlined in the comprehensive review.

(7) If the SAP does not meet the requirements and expectations for full approval, then approval for the SAP may be denied by the State Board. If full approval is denied, then the EPP may not advertise the program as leading to licensure.

(8) Failure by an EPP to request a program review for a new SAP or an SAP that has undergone substantial change may result in its candidates being ineligible for licensure or endorsement.

(9) EPPs that wish to offer an instructional leader prep program shall submit a proposal to the Department that demonstrates alignment to the instructional leader preparation standards.

(10) EPPs may only recommend initial licensure candidates for endorsements that are part of an approved SAP.

Authority: T.C.A. §§ 49-1-302, 49-5-101, 49-5-108. ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed*

October 11, 1995; effective February 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed October 31, 2000; effective February 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Repeal filed May 29, 2015; effective August 27, 2015.

0520-02-04-.06 Program Requirements

(1) EPPs shall ensure that all programs that lead to licensure adequately address educator preparation standards, the professional education standards, all applicable literacy standards, and all applicable specialty area standards.

(2) EPPs shall ensure completers are prepared to deliver or lead instruction that enables students to master the Tennessee Academic Standards. Programs shall ensure that candidates master the content covered in the areas for which they are prepared to teach. EPPs shall align course work, clinical experiences, and candidate assessment systems to appropriate standards for each specialty area.

(3) All EPPs shall require that candidates demonstrate content knowledge in the specialty area program.

(4) EPPs shall provide training to support candidates' readiness to deliver or lead instruction informed by Response to Instruction and Intervention Framework (RTI²). Teacher candidates not seeking endorsement in Special Education shall be prepared to deliver instruction and intervention at the Tier I and II levels.

(5) EPPs shall provide training to support candidates' understanding of the state-approved educator evaluation framework.

(6) EPPs shall provide candidates training on the teacher code of ethics outlined in T.C.A. §§ 49-5-1001 through 49-5-1005 and the National Association of State Directors of Teacher Education and Certification's (NASDTEC) Model Code of Ethics for Educators.

(7) Pursuant to T.C.A. § 49-5-513, EPPs shall provide candidates with instruction on what is constitutionally permissible with teaching religious content and strategies for dealing with religious content in curriculum that are educationally sound, fair, neutral, and objective.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.*

0520-02-04-.07 Provider and Program Reviews and Annual Reports

(1) In order to maintain full state approval, EPPs shall participate in a comprehensive review every seven (7) years. EPPs may elect to pursue ongoing full state approval through a state-managed comprehensive review or a comprehensive review managed by an educator preparation

accrediting agency recognized by the Council for Higher Education Accreditation (CHEA) and the State Board.

(2) Each comprehensive review, either state-managed or managed by an educator preparation accrediting agency recognized by CHEA and the State Board, shall include, at a minimum, the following components:

(a) Prior to an EPP's comprehensive review, the Department shall evaluate data from the EPP's three (3) most recent annual reports.

(b) EPPs shall submit evidence demonstrating alignment to the educator preparation provider standards, the professional education standards, all applicable literacy standards, and all applicable specialty area standards approved by the State Board.

(c) A trained comprehensive review team shall be appointed for each EPP undergoing comprehensive review and shall be responsible for, at a minimum:

1. Reviewing all required evidence submitted by the EPP that demonstrates high quality implementation of:

(i) Content and pedagogical knowledge;

(ii) Clinical partnerships and practice;

(iii) Candidate quality, recruitment, and selectivity;

(iv) Program impact; and

(v) Provider quality assurance and continuous improvement;

2. Reviewing annual report data for the EPP from the applicable review cycle;

3. Conducting an on-site visit; and

4. Recommending an approval status to the Department.

(d) An Advisory Committee on Educator Preparation (ACEP) shall be appointed to review the recommendation of the review team and shall provide a preliminary recommendation for approval status to the Department.

(3) Following each comprehensive review, the Department shall recommend to the State Board one (1) of the following:

(a) Full approval. The EPP meets expectations on one (1) of the following statuses and may recommend candidates for licensure:

1. Full approval, exemplary status. The EPP exceeds expectations on a majority of the standards and meets expectations on all other standards and components.

2. Full approval. The EPP meets expectations on all standards.

3. Full approval, minor stipulations. The EPP meets expectations on all standards, but falls below expectations on one (1) or more components across multiple standards. The EPP must submit to the Department a plan for addressing the areas in need of improvement within three (3) months of receiving full approval, minor stipulations. The Department shall annually review the EPP's progress on

the submitted plan for improvement. If the EPP has adequately addressed the areas in need of improvement the Department may recommend to the State Board removal of the minor stipulations for the remainder of the approval period of the EPP. If within a three (3)-year period the Department determines the areas in need of improvement are not adequately addressed, then the EPP may be required to participate in an interim review.

(b) Probationary approval, major stipulations. The EPP meets expectations on three (3) or more standards but falls below expectation on one (1) or more standard(s). An EPP that is issued probationary approval may recommend candidates for licensure but shall submit to the Department an improvement plan for addressing the areas in need of improvement within three (3) months of receiving probationary approval status from the State Board. Each year, the EPP shall present evidence that the provider is implementing the improvement plan and making progress toward meeting expectations. The EPP shall also participate in a focused review within three (3) years of receiving probationary approval from the State Board. The EPP shall not submit SAP proposals for conditional approval until the Department determines all deficiencies have been adequately addressed. The EPP shall specifically report on the progress made in each area of deficiency on their annual report for the three (3) years following the issuance of probationary approval.

(c) Denial of approval. The EPP falls below expectations on two (2) or more standards. EPPs that are denied approval shall no longer enroll new candidates for licensure and shall notify all current candidates of the denial of approval status of its program. Denied EPPs may continue to serve candidates who can complete the program by the end of the semester that falls twelve (12) months after the date of the denial of approval. The EPP shall assist candidates who are unable to complete the program within this period in transferring to another degree program at the institution or to another approved EPP. The EPP may not re-apply for conditional approval for at least three (3) years from the date of denial.

(4) The Department shall manage an interim review process for EPPs or individual SAPs that have been identified as performing below expectations on the annual report for a minimum of two (2) consecutive years at any point. The Department may manage an interim review process for EPPs with initial approval that perform below expectations as reported on the annual report at any point during the initial approval period. Following an interim review, the Department may make a recommendation for approval status change, including denial of approval, to the State Board.

(5) The Department shall manage a focused review process for EPPs or individual SAPs that receive probationary approval based on the comprehensive review. The Department shall appoint a review team responsible for reviewing the EPP's progress on implementation of the required improvement plan. As a result of a focused review, the Department may make an approval status change recommendation, including denial of approval, to the State Board.

(6) If an EPP refuses to participate in any required review, the Department may make a recommendation for approval status change, including denial of approval, to the State Board.

(7) EPPs shall annually submit to the Department the following:

(a) Any substantial changes to the approved EPP or SAP(s), including changes to accreditation status, parent organization, primary partnerships, the requirements for selection, structure of the program of study, clinical requirements, or candidate assessment systems;

(b) Contact information, including primary contact information and verification of the designated head of the EPP and approved certification or licensure officers; and

(c) Progress reports addressing any stipulations, including all required focused or interim reviews, identified in the most recent comprehensive review, if applicable.

(8) Each EPP shall annually verify or submit all information identified by the Department for inclusion in an annual report. Annual reports provide evidence of performance of the provider and SAP or clusters of SAPs and shall include, at a minimum, the following:

(a) Metrics related to recruitment and selection of candidates, such as selectivity characteristics;

(b) Goals related to the recruitment and program retention of candidates from underrepresented demographics including race, ethnicity, and sex;

(c) Information on completer and job-embedded candidate employment in qualifying positions in Tennessee public schools;

(d) Completer and job-embedded candidate retention in Tennessee public schools following initial employment;

(e) Results from a program completer satisfaction survey;

(f) Results from an employer satisfaction survey administered to all primary partner LEAs and any LEA employing more than twenty-five percent (25%) of the program completer cohort;

(g) Completer outcomes including, but not limited to, program completion rates and pass rates on required licensure assessments;

(h) Job-embedded candidate outcomes, if applicable, including but not limited to pass rates on required licensure assessments; and

(i) Completer and job-embedded candidate impact as measured by components of an approved Tennessee educator evaluation model including, but not limited to, overall levels of effectiveness, observation scores, and individual growth scores.

(9) EPPs with approved instructional leader preparation programs shall annually verify or submit all information identified by the Department for inclusion in the annual report. The Department shall, at a minimum, include the following ILPP metrics in the annual report:

(a) Metrics related to recruitment and selection;

(b) Information on employment and retention, including the percentage of completers employed in a qualifying instructional leadership position and the percentage of completers retained in a qualifying instructional leadership position after initial employment as a leader;

(c) Results from a program completer satisfaction survey;

(d) Results from an employer satisfaction survey administered to all primary partner LEAs;

(e) Completer outcomes including, but not limited to, program completion rates and pass rates on required licensure assessments; and

(f) Completer impact as measured by components of an approved Tennessee educator evaluation model.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed November 22, 1993; effective March 30, 1994. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed February 20, 2008; effective June 27, 2008. Repeal filed May 29, 2015; effective August 27, 2015.*

0520-02-04-.08 Admission to Educator Preparation Programs

(1) Candidates for admission to a baccalaureate level educator preparation program shall, at a minimum, meet the following criteria:

(a) A minimum postsecondary grade point average (GPA) of 2.75 at the time of admission to the EPP;

(b) A qualifying score on the Praxis Core, ACT or SAT assessment defined in the State Board's Educator Preparation Policy; and

(c) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI) in accordance with T.C.A. § 49-5-5610.

(2) Candidates for admission to a post-baccalaureate educator preparation program shall, at a minimum, meet the following criteria:

(a) Evidence of a bachelor's degree or higher from a regionally accredited IHE;

(b) A minimum overall GPA of 2.75 from a completed baccalaureate or post-baccalaureate degree program or a GPA of 3.00 in the most recent sixty (60) credit hours earned at a regionally accredited IHE;

(c) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI) in accordance with T.C.A. § 49-5-5610; and

(d) For admission to programs that include job-embedded clinical practice, a degree with a major in the specialty area or qualifying scores on the required content assessment defined in the State Board's Professional Assessments for Tennessee Educators Policy.

(3) Candidates for admission to an ILPP shall, at a minimum, meet the following criteria:

(a) Have successfully completed an educator preparation program and hold a valid teacher license from Tennessee or from a state other than Tennessee;

(b) Have at least two (2) years of qualifying education experience as defined by the Department;

(c) Have demonstrated effectiveness as an educator in the most recent two (2) years as evidenced by a state-approved evaluation model or similar measure for educators employed in schools that do not utilize a state-approved evaluation model;

(d) Have demonstrated leadership potential in accordance with guidelines developed by the Department; and

(e) Be recommended by an LEA and participate in an interview conducted by a program admissions committee.

(4) EPPs may establish additional or more rigorous admission requirements than the state minimum requirements, provided they are in compliance with all state and federal laws, rules, and regulations.

(5) To admit candidates on appeal, EPPs must submit an admissions appeal procedure process to the Department for approval. If the Department denies an admissions appeal procedure process, the EPP shall not admit candidates on appeal. Each EPP with an approved admission appeal procedure shall report to the Department the names, academic qualifications, and basis on which candidates were admitted on appeals each year.

(6) Each EPP shall report to the Department each candidate admitted to the educator preparation program and identify each candidate admitted on appeal.

Authority: *T.C.A. §§ 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Repeal filed May 29, 2015; effective August 27, 2015.*

0520-02-04-.09 Partnerships

(1) All EPPs shall have a partnership with each LEA where enrolled candidates are placed for clinical experiences.

(2) Each Tennessee-based EPP shall have at least one (1) primary partnership with an LEA in which both parties collaborate to establish an explicit process for identifying and responding to LEA-identified areas of need, developing candidate selection criteria, and designing and implementing high-quality, needs-based clinical experiences. The primary partnership shall also establish the roles and responsibilities of EPP faculty and LEA staff, including clinical mentors and supervisors and establish clear expectations regarding the delivery of candidate support and evaluation.

(3) Tennessee-based EPPs that meet the following requirements may request to establish a primary partnership with an alternate entity that oversees or manages two (2) or more schools in Tennessee:

(a) The most recent completer cohort has ten (10) or fewer educators employed in a Tennessee public school; and

(b) The EPP provides a description of how the partnership will comply with the requirements of paragraph 2.

(4) All EPPs shall establish state-recognized partnerships with LEAs with which they do not have a primary partnership, but where enrolled candidates are placed for clinical experiences. State-recognized partnerships, at a minimum, shall establish the roles and responsibilities of EPP faculty and LEA staff, including clinical mentors and supervisors and establish clear expectations regarding the delivery of candidate support and evaluation.

(5) Out-of-state and online EPPs that place candidates in Tennessee LEAs for clinical experiences shall have formal state-recognized partnership agreements with the LEAs hosting their

candidates. This includes placement of candidates who are employed as teachers-of-record while completing preparation programs through the job embedded clinical practice option. Out-of-state and online EPPs must submit LEA partnership agreements to the Department in order to receive partnership recognition from the state.

(6) Pursuant to T.C.A. § 49-5-5631, all full-time faculty members, including academic deans or executive leaders, in a Tennessee approved EPP, who are involved in the preparation of teachers, shall further their professional development through direct personal involvement in a public school or LEA on an annual basis. Each primary partnership agreement shall detail the faculty involvement. Direct faculty involvement shall include at least one (1) of the following activities:

(a) Professional learning targeted to or led by pre-K through grade twelve (pre-K–12) educators;

(b) Professional learning focused on local education agency-specific educational initiatives;

(c) Direct instruction to pre-K through grade twelve (pre-K–12) students;

(d) Curriculum development;

(e) District level strategic partnerships; or

(f) Direct observation of pre--K through grade twelve (pre-K--12) classrooms.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendments filed September 6, 2007; effective January 28, 2008. Amendment filed February 20, 2008; effective June 27, 2008. Amendment filed October 20, 2009; effective March 31, 2010. Repeal filed May 29, 2015; effective August 27, 2015.*

0520-02-04-.10 Clinical Experiences

(1) Each EPP shall provide candidates with clinical experiences. EPPs shall design these experiences to provide candidates with opportunities to build and demonstrate content knowledge, pedagogical knowledge, and pedagogical content knowledge. These experiences shall reflect the breadth of the grade span and the depth of the content reflected by the specialty area(s) in which the candidate is being prepared.

(2) Each candidate shall complete field experiences and at least one (1) clinical practice in order to successfully complete an educator preparation program.

(3) EPPs shall ensure candidates complete a clinical practice in the appropriate licensure and endorsement area.

(4) Field experiences shall provide early and ongoing practice opportunities to apply content and pedagogical knowledge in settings reflective of the specialty area(s) in which the candidate is being prepared.

(5) EPPs shall develop requirements for completion of clinical practice and outline the causes and procedures by which the clinical practice can be terminated. Candidates who do not successfully complete clinical practice shall not be recommended for licensure.

(6) Prior to participating in a clinical practice, post-baccalaureate program candidates shall receive training on the professional education standards.

(7) Clinical practice sites may include Tennessee public schools, including public charter schools and Tennessee state special schools, or Category 1 non-public schools. Category 2 or Category 3 non-public schools may serve as placement sites for no more than half of the candidate's clinical practice. Category 4 and 5 schools shall not be used as placement sites. These categories are defined in State Board Rule 0520-07-02. If extraordinary circumstances arise that prevent a candidate from completing the clinical experience in Tennessee, the EPP may request permission for the candidate to complete the clinical practice in another state, provided the candidate has completed all course requirements of the preparation program with the exception of the clinical practice. Information of candidates that complete the clinical practice outside of Tennessee shall be included on the annual report.

(8) EPPs shall ensure all candidates participating in a clinical practice have a school-based clinical mentor.

(9) Educators who serve as a school-based clinical mentor in a public school setting shall, at a minimum:

(a) Hold an active Tennessee license with an endorsement in the area or a closely related area where they will be supervising the candidate;

(b) Have a level of overall effectiveness of above expectations or significantly above expectations for the prior school year; and

(c) Have a minimum of three (3) years of experience as a teacher, school services personnel, or instructional leader, as applicable.

(10) Clinical mentors shall be selected jointly by the EPP and the partner LEA.

(11) Clinical mentors shall, in cooperation with the EPP clinical supervisor, direct the activities of the candidate in the classroom.

(12) EPPs shall coordinate with LEAs to ensure clinical mentors are provided release time for counseling, observation, evaluation, or other activities related to the clinical practice that occur during the school day.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Repeal filed May 29, 2015; effective August 27, 2015.*

~~RULES~~

~~OF~~

~~THE STATE BOARD OF EDUCATION~~

~~CHAPTER 0520-02-04~~

~~EDUCATOR PREPARATION~~

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~~**0520-02-04-.01 GENERAL INFORMATION AND REGULATIONS.**~~

~~(1) All educator preparation providers and the licensure programs they offer must be approved by the State Board of Education. Approval shall be awarded based on policies established by the State Board of Education.~~

~~(2) Licensure programs may be offered by Tennessee institutions of higher education, Tennessee local education agencies, education-related organizations, or the Tennessee Department of Education.~~

~~(3) All approved educator preparation providers offered by Tennessee institutions of higher education and education-related organizations must establish and document a collaborative partnership with at least one Tennessee local education agency. Requirements for this partnership are defined in State Board of Education policy.~~

~~(4) Licensure programs, which are conditionally or fully approved by the State Board of Education according to State Board of Education Policy, will be eligible to prepare and recommend candidates for licensure.~~

~~(5) Educator preparation providers must identify the area(s) of endorsement, for which the candidate is recommended, when the licensure application is submitted. Eligibility for endorsement areas are defined in State Board of Education policy.~~

~~(6) Educator preparation providers that offer programs for additional endorsements shall submit to the Tennessee Department of Education a list of specialty areas in which additional endorsements are offered. Providers will verify completion of the appropriate course requirements to the Tennessee Department of Education.~~

~~***Authority:*** *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed June 30, 2005; effective October 28, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed July 31, 2008; effective November 28, 2008. Amendment filed September 23, 2008; effective January 28, 2009. Amendments filed April 30, 2009; effective August 28, 2009. Amendments filed December 19, 2012; effective May 31, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendment filed July 23, 2014; effective October 20, 2014. Repeal and new rule 0520-02-04-.01 filed May 29, 2015; effective August 27, 2015. Amendment of rule 0520-02-04-(9)(a) filed May 29, 2015; effective August 27, 2015. On July 30, 2015, the State Board of Education filed a withdrawal of the rule 0520-02-04-(9)(a).*~~

~~**0520-02-04-.02 TYPES OF LICENSES AND CERTIFICATES.**~~

~~Authority: T.C.A. §§ 49-1-302, 49-5-101, 49-5-108 and 49-5-5201. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed November 3, 1993; effective March 30, 1994. Amended by Public Chapter No. 957 Acts of 1994; effective May 10, 1994. (See Attorney General Opinion No. 094-080). Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. However, notice of withdrawal of proposed amendment (2) filed August 3, 2009 and effective August 3, 2009 (to have been effective August 28, 2009). Repeal filed May 29, 2015; effective August 27, 2015.~~

~~**0520-02-04-.03 THE TRANSITIONAL LICENSE, Interim Licenses, and Permits.**~~

~~Authority: T.C.A. §§ 49-1-302, 49-5-101, and 49-5-108. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed May 19, 2005; effective September 28, 2005. Repeal and new rule filed April 17, 2006; effective August 28, 2006. Amendments filed April 30, 2009; effective August 28, 2009. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.04 APPLICATION FOR THE TEACHER LICENSE.~~

~~Authority: T.C.A. §§ 49-1-302; 49-5-101 and 49-5-108. Administrative History: Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.05 THE PRAXIS SERIES: PROFESSIONAL ASSESSMENTS FOR BEGINNING TEACHERS.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-5605.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed October 31, 2000; effective February 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed December 28, 2005; effective April 28, 2006. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.06 RESERVED.~~

~~0520-02-04-.07 REQUIREMENTS FOR ENDORSEMENTS, GRADES K-8, ON A TEACHER LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108. (Public Chapter No. 535 - Education Improvement Act).* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Amendment filed January 29, 1993; effective April 30, 1993. Amendment filed November 22, 1993; effective March 30, 1994. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed February 20, 2008; effective June 27, 2008 Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.08 RESERVED.~~

~~***Authority:*** *T.C.A. §§49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.09 REQUIREMENTS FOR ENDORSEMENTS, GRADES 7-12, ON A TEACHER LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-202, 49-1-302, 49-1-302(15), 49-1-302(16) and 49-5-108. (Public Chapter No. 535 - Education Improvement Act).* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 12, 1992; effective August 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendments filed September 6, 2007; effective January 28, 2008. Amendment filed February 20, 2008; effective June 27, 2008. Amendment filed October 20, 2009; effective March 31, 2010. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.10 REQUIREMENTS FOR ENDORSEMENTS, GRADES K-12, ON A TEACHER LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Repeal filed May 29, 2015; effective August 27, 2015~~

~~0520-02-04-.11 RESERVED.~~

~~0520-02-04-.12 REQUIREMENTS FOR THE PROFESSIONAL SCHOOL SERVICE PERSONNEL LICENSE.~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed November 22, 1993; effective March 30, 1994. Expired rules edited by Secretary of State in October 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed December 31, 2001; effective April 30, 2002. Amendments filed May 19, 2005; effective September 28, 2005. Repeal filed May 29, 2015; effective August 27, 2015~~

~~**0520-02-04-.13 REQUIREMENTS FOR THE OCCUPATIONAL EDUCATION LICENSE.**~~

~~***Authority:*** *T.C.A. §§49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed June 11, 2007; effective October 25, 2007. Amendment filed January 20, 2012; effective June 30, 2012. Amendments filed February 6, 2013; effective July 29, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendments filed May 8, 2014; effective October 29, 2014. Repeal filed May 29, 2015; effective August 27, 2015~~

~~**0520-02-04-.14 RENEWAL OF TEACHER LICENSES.**~~

~~***Authority:*** *§ 49-1-302.* ***Administrative History:*** *Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992. Amendment filed June 29, 1993; effective September 28, 1993. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed January 26, 2004; effective May 28, 2004. Amendment filed June 11, 2007; effective October 25, 2007. Amendment filed March 24, 2014; effective August 29, 2014. Withdrawal of the March 24, 2014 amendment filed July 10, 2014 by the State Board of Education. Repeal filed May 29, 2015; effective August 27, 2015~~

~~**0520-02-04-.15 RENEWAL OF ADMINISTRATOR LICENSES.**~~

~~***Authority:*** *T.C.A. §§ 49-1-302 and 49-5-108.* ***Administrative History:*** *Original rule filed November 3, 1993; effective March 30, 1994. Amendment filed May 28, 1999; effective September 28, 1999. Repeal filed May 29, 2015; effective August 27, 2015~~

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Lillian Hartgrove	X				
Gordon Ferguson	X				
Elissa Kim	X				
Mike Edwards	X				
Bob Eby	X				
Wendy Tucker	X				
Nick Darnell				X	
Darrell Cobbins				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education (board/commission/ other authority) on 01/08/2019 (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: *10/29/2018*

Rulemaking Hearing(s) Conducted on: (add more dates). *12/21/2018*

Date: 1/15/2019

Signature: Angie C Sanders

Name of Officer: Angie Sanders

Title of Officer: General Counsel

SUSAN L. LIVERMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: January 15, 2019

Notary Public Signature: Susan L. Liverman

My commission expires on: 8-4-2020

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-02-04 Educator Preparation

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.

Herbert H. Slatery III
Attorney General and Reporter

1/28/2019
Date

Department of State Use Only

Filed with the Department of State on: 1/28/19

Effective on: 4/28/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Minimum Requirements for the Approval of Public Schools
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302 establishes the State Board of Education's (SBE) authority to set minimum requirements for the approval of public schools. This law grants the SBE purview over components set forth in this rule, including academic standards, graduation requirements, and requirements for operating public schools.
EFFECTIVE DATES:	April 11, 2019 through June 30, 2020
FISCAL IMPACT:	N/A
STAFF RULE ABSTRACT:	This proposed rule updates to align with legislation passed in 2018 and recommendations of the 2018 Assessment Task Force of the Department of Education, and to make additional clarifications. Below is a brief summary of proposed changes to the rule: • Updates language on the use of stockpile days to include school-wide or system-wide instructional planning meetings; • Includes the ability of LEAs to seek a class-size waiver from the Commissioner for CTE classes in grades 9-12; • Includes a requirement that all public high schools must have an automated external defibrillator (AED) placed within the school; • Clarifies the circumstances by which directors of schools may waive the 3rd elective focus credit if it would prevent or delay graduation for a student; • Eliminates the required English III and Chemistry end-of-course exams per the recommendation of the Assessment Task Force;

• Updates the percentage that EOC scores must count as part of a student's final grade.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule does not have an effect 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 changes to this rule are updates to align with legislation passed in 2018 and recommendations of the 2018 Assessment Task Force of the Department of Education, and to make additional clarifications. Below is a brief summary of proposed changes to the rule:

- Updates language on the use of stockpile days to include school-wide or system-wide instructional planning meetings.
- Includes the ability of LEAs to seek a class-size waiver from the Commissioner for CTE classes in grades 9-12.
- Includes requirement that all public high schools must have an automated external defibrillator (AED) placed within the school.
- Clarifies circumstances by which directors of schools may waive the 3rd elective focus credit if it would prevent or delay graduation for a student.
- Eliminates the required English III and Chemistry end-of-course exams per the recommendation of the Assessment Task Force.
- Updates the percentage that EOC scores must count as part of a student's final grade.

(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;

T.C.A. § 49-1-302 establishes the State Board of Education's authority to set minimum requirements for the approval of public schools. This law grants the SBE purview over components set forth in this rule, including academic standards, graduation requirements, and requirements for operating public schools.

(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;

Schools and school districts are most directly affected by this rule. The State Board of Education did not receive any comments from representatives of those entities urging either adoption or rejection of this rule.

The Tennessee Department of Education is also directly affected and urged adoption of this rule. The State Board staff concurred with the Department's recommendation to adopt the rule.

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

N/A

(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;

N/A

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(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

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

N/A

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 01-16-19
Rule ID(s): 8253
File Date: 1/11/19
Effective Date: 4/11/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Amy Owen
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Parkway
Zip:	37243
Phone:	615-532-1776
Email:	Amy.Owen@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	**Rule Title**
0520-01-03-.01	Approval of Schools
0520-01-03-.02	Organization of Schools
0520-01-03-.03	Administration of Schools
0520-01-03-.05	State Academic Standards
0520-01-03-.06	Graduation
0520-01-03-.08	Pupil Personnel Services

Rule 0520-01-03 Minimum Requirements for the Approval of Public Schools is amended by making changes in alignment with 2018 legislation and the recommendations of the Commissioner's Assessment Task Force, in addition to grammatical corrections, so that as amended it shall read:

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS

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0520-01-03-.01	Approval of Schools	0520-01-03-.08	Pupil Personnel Services
0520-01-03-.02	Organization of Schools	0520-01-03-.09	Special Education Programs and Services
0520-01-03-.03	Administration of Schools	0520-01-03-.10	Waivers
0520-01-03-.04	Repealed	0520-01-03-.11	Repealed
0520-01-03-.05	State Academic Standards	0520-01-03-.12	Repealed
0520-01-03-.06	Graduation	0520-01-03-.13	Repealed
0520-01-03-.07	Library Information Center		

0520-01-03-.01 APPROVAL OF SCHOOLS.

(1) Inspections of Schools.

The Department of Education shall make periodic inspections of the schools under its control. These inspections shall be made to determine the extent to which local school systems operate in compliance with State Board of Education rules and regulations and to verify the information received on reports from local school officials.

(2) Approval Classifications for School Systems.

Each school system shall be classified as approved or non-approved. School systems classified as non-approved by the Commissioner of Education shall receive a written explanation of the reasons for such classification and shall be afforded the opportunity to respond. The Commissioner's notification shall include a time by which corrective action shall be completed by the school system. If such corrective action is not taken within the time specified, the Commissioner shall impose sanctions on the school system which may include withholding part or all of state school funding to the non-approved system.

(3) Reports on School System Compliance with the Rules and Regulations.

The Department of Education shall make an annual report to the State Board of Education regarding each school system's compliance with the rules and regulations. The report shall include the approval status of each local school system, deficiencies identified by the school in the approval process, an assessment of action needed to attain approval, local school system response, and sanctions imposed upon systems which do not comply.

(4) Reports on Waivers Granted by the Commissioner of Education.

The Department of Education shall post to its website any waiver of rules, regulations or policies granted by the department within five (5) business days of the Commissioner's approval. The waivers shall include the name of the system requesting the waiver and an explanation of the waiver requested.

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(5) Internal Audit.

The Department of Education shall maintain an internal audit function which shall assist the Department in the inspection of schools. Internal audit reports shall be presented to the Commissioner of Education and the State Board of Education.

Authority: *T.C.A. § 49-1-302.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed October 1, 1985; effective October 31, 1985. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992.*

0520-01-03-.02 ORGANIZATION OF SCHOOLS.

(1) Length of School Day for Students.

(a) The minimum length of the school day for students shall be six and one-half (6½) hours.

(b) School systems may provide for professional development during the school day under one (1) of the following options:

1. School systems. School systems which elect to extend the school day to at least seven (7) hours for the purpose of meeting instructional time requirements missed due to dangerous or extreme weather conditions may allocate a portion of that extension for the purpose of faculty professional development, IEP team meetings, ~~M-team meetings, S-team meetings,~~ school-wide or system-wide instructional planning meetings, parent/teacher conferences, or other similar meetings, as permitted in T.C.A. § 49-6-3004(e)(1), under the following conditions:

(i) Prior to the beginning of the school year, the school system shall designate how many days shall be allocated for dangerous or extreme weather conditions and how many shall be allocated for student dismissals for faculty professional development, IEP team meetings, ~~M-team meetings, S-team meetings,~~ school-wide or system-wide instructional planning meetings, parent/teacher conferences, or other similar meetings. The total number of days shall not exceed thirteen (13).

(ii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(iii) School systems shall submit their plans for the allocation of excess time to the Ccommissioner for approval.

2. Schools. School systems may adopt policies providing for individual schools to have school days of at least seven (7) hours in order to accumulate instructional time to be used for periodic early student dismissals for the purpose of faculty professional development. The following conditions shall apply to school systems exercising this option:

(i) Early dismissals shall not exceed the equivalent of thirteen (13) days and shall not exceed three and one-half (3½) hours in any week.

(ii) Students shall attend school one-hundred eighty (180) days.

(iii) Faculty professional development shall be consistent with standards and guidelines established by the State Board of Education.

(c) The length of the kindergarten day shall not be less than four (4) hours. Double sessions in any kindergarten program may be permitted so long as both sessions meet all legal requirements for kindergarten programs.

Authority: *T.C.A. §§ 49-1-302 and 49-6-3004.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed April 13, 1982; effective May 28, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed October 29, 1986; effective December 13, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed July 21, 1988; effective October 29, 1988. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed November 3, 1993; effective March 30, 1994. Amendment filed March 14, 1995; effective July 28, 1995. Amendment filed April 29, 1996; effective August 28, 1996.*

0520-01-03-.03 ADMINISTRATION OF SCHOOLS.

(1) Teacher Assignment. Teachers shall be on duty at least seven (7) hours per day and such additional time as the administrative organization requires.

(2) Salaries and Licensure for all Licensed Personnel.

(a) The employment standards and licensure requirements established by the State Board of Education shall be applicable to all licensed personnel employed by a local board of education without regard to the source of financial support.

(b) A salary schedule applicable to all licensed personnel shall be approved by the local board of education.

(3) Class Size for Grades Kindergarten (K) through Twelve (12).

(a) Local boards of education shall have policies providing for class sizes in grades kindergarten (K) through twelve (12) in accordance with the following:

Grade Level	Average Class Size	Maximum Class Size
K-3	20	25
4-6	25	30
7-12	30	35
Career and Technical Education	20	25

(b) The average class size for a grade level unit (such as the unit K-3) shall not exceed the stated average, although individual classes within that grade level unit may exceed the average.

(c) No class shall exceed the prescribed maximum size.

(d) The average class size and the maximum class size shall be based on regular classroom teaching positions, exclusive of principal, assistant principal, counselor, elementary art, elementary music, elementary physical education, librarian, special education, or other specialized positions.

(e) Class size limits may be exceeded in such areas as typewriting and instrumental and vocal music classes, provided that the effectiveness of the instructional program in these areas is not impaired.

(f) LEAs may seek a waiver from the Commissioner to extend the Career and Technical Education (CTE) class size average in grades nine through twelve (9-12) provided that individual class sizes do not exceed the maximum class size set for CTE classes.

(g~~f~~) Local school systems shall not establish split-grade classes for the purpose of complying with the provisions of the class size averages and maximums. However, these provisions do not prevent school systems from using multi-aged classes.

(h~~g~~) Local boards of education must approve the establishment of any split-grade classes for any purpose, provided that split-grade classes shall not be established for the purpose of compliance with the provisions herein.

(i~~h~~) The average class size specified for the grade levels involved in split-grade classes will be the maximum size allowed in such classes.

(4) Planning Time.

(a) Local boards of education shall provide full-time classroom teachers in grades kindergarten (K) through twelve (12) with individual duty-free planning periods during the established instructional day.

(b) Individual planning time shall consist of two and one-half (2½) hours each week during which teachers have no other assigned duties or responsibilities other than planning for instruction. The two and one-half (2½) hours may be divided on a daily or other basis.

(c) Individual duty-free planning time shall not occur during any period that teachers are entitled to duty-free lunch.

(d) Any school system which is providing an individual duty-free planning period by extending the school day by thirty (30) minutes as of the beginning of the 2000-01 school year may continue such practice and satisfy the planning time requirements.

(e) The director of schools shall report annually to the Department of Education regarding compliance with the individual duty-free planning time requirement.

(5) Duty Free Lunch Period. In schools providing a lunch period for students, all teachers shall be provided each day with a lunch period during which they shall not have assigned duties. The lunch period for each teacher shall be at least the same amount of time as that allowed for students.

(6) Summer Schools.

(a) Summer schools shall be under the control and management of the local board of education having jurisdiction.

(b) The following shall be required for grades nine (9) through twelve (12):

1. State academic standards shall be used for all courses.

2. Summer school teachers shall be licensed and hold endorsements in the subject areas in which they are teaching.

3. Any course work successfully completed in an approved summer school is fully transferable to any other approved school.

(7) Student Evaluation in Grades Kindergarten (K) through grade eight (8).

(a) The student evaluation program for grades kindergarten (K) through grade eight (8) shall consist of the following:

1. A criterion-referenced test will be administered in subjects and grade levels in accordance with policy of the State Board of Education.

2. Based on achievement data from the benchmark years three (3), five (5), and eight (8), there shall be a research-based intervention initiated by the local education agency for students scoring below proficient in reading, language, and mathematics on the criterion referenced portion of the state achievement test. The intervention shall occur during the year following the benchmark assessment data. The Department of Education shall assist systems in the identification of effective intervention programs. Evidence of compliance with this requirement shall become a component of the school improvement plan.

3. An assessment of writing in grades five (5) and eight (8).

(b) State-mandated student testing programs shall be undertaken in accordance with procedures published by the Department of Education. Local school systems shall develop local policies regarding security of test administration, consistent with Department of Education guidelines.

(c) The Department of Education shall annually report to the State Board of Education the number and percentage of students ~~scoring~~ that scored in the below achievement level, but ~~have been~~were promoted to the next grade level by the school system. This data shall be disaggregated by subgroups similar to those required for federal reporting.

(d) LEAs shall use the Response to Instruction and Intervention (RTI^2). RTI^2 shall include high-quality instruction and interventions tailored to student need where core instructional and intervention decisions are guided by student outcome data. Tiered interventions in the areas of reading, mathematics, and/or writing shall occur in general education depending on the needs of the student. If a student fails to respond to intensive interventions and is suspected of having a Specific Learning Disability, then the student may require special education interventions.

(8) Admission and Enrollment of Students.

(a) Children entering kindergarten shall be five (5) years of age on or before August 15. However, a child does not have to enroll in school at five (5) years of age, but enrollment must occur no later than the beginning of the academic year following the child's sixth (6th) birthday.

(b) Any transfer student applying for admission who was legally enrolled in an approved kindergarten in another state and who will be five (5) years of age no later than December 31 of the current school year, shall be enrolled.

(c) A child must attend school until his/her eighteenth (18th) birthday, unless:

1. He or she has received a diploma or other certificate of completion of high school;

2. He or she is enrolled and making satisfactory progress in a course of instruction leading to a High School Equivalency Diploma; or

3. He or she is enrolled in a home school and has reached [illegible] seventeenth (17th) birthday.

(9) Students Transferring From One School to Another.

(a) Students may transfer among public schools or among Category I, II, or III private schools (see Chapter 0520-07-02), without loss of credit for completed work. The school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned.

(b) Principals shall allow credit for work transferred from other schools only when substantiated by official transcripts. Students transferring from schools that are not approved by the State Board of Education or by comparable agencies shall be allowed credit only when they have passed comprehensive written examinations approved, administered, and graded by the principal. Student scores from a recognized standardized test may substitute for the required comprehensive written examinations.

(c) The examination administered to students in grades one (1) through eight (8) shall cover only the last grade completed.

(d) The examinations administered to students in grades nine (9) through twelve (12) shall cover the individual subjects appearing on the official transcripts. The examination for subjects of more than one (1) unit need cover only the last unit completed. A student transferring from one school to another may count for graduation one-half (½) unit of credit in courses for which a minimum of one (1) unit is required only if the course is not offered in the school to which he or she is transferring.

(e) The principal is authorized to transmit transcripts of a student to any school to which the student transfers or applies for admission when the records are requested by the receiving school or institution. The parent or guardian of the student will be notified that the transcript is being sent.

(f) Local boards of education may admit pupils from outside their respective local school systems at any time.

(g) Local boards of education may arrange for the transfer of students residing within their systems to other school systems by establishing agreements with other local boards of education for the admission or transfer of students from one school system to another.

(h) The receiving board of education may set a time before or during the school year after which it will not accept transfer students. The receiving board of education may charge the non-resident student tuition to attend.

(i) If a local board of education otherwise permits non-resident students to transfer into its schools, it may not discriminate against any students solely on the grounds of their race, sex, national origin or disability, nor may it charge such students a tuition over and above the usual tuition for non-disabled persons.

(10) Public Virtual Schools.

(a) Public virtual schools must comply with all applicable State Board of Education policies and rules and regulations.

(b) Public virtual schools shall:

1. Be approved by the local board of education;

2. Use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;

3. Review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the State Board of Education;

4. Meet the equivalent of the 180 days of instruction and six and one-half (6½) hours per day per academic year pursuant to T.C.A. § 49-6-3004;

5. Monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;

6. Administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;

7. Be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;

8. Ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);

9. Ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;

10. Ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and

11. Meet class size standards established by T.C.A. § 49-1-104. An individual virtual school may increase the enrollment in virtual classes by up to twenty-five percent (25%) over the class size standards established by T.C.A. § 49-1-104 if the school demonstrates student achievement growth at a level of "at expectations" or greater, as represented by the Tennessee Value-Added Assessment System (TVAAS) in the prior year.

(c) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in T.C.A. § 49-6-3007.

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.

2. On or before August 1 of each year, the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two (2) weeks when changes occur relative to students residing within the LEA's jurisdiction.

3. Once a non-resident student has been accepted by and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public

virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

(11) Records and Reports.

(a) A cumulative record provided to teachers by local school systems shall be kept up to date for each student, kindergarten (K) through grade twelve (12), and shall remain as local school property.

(b) Each school shall provide for the storage and safekeeping of all records and reports.

(c) The maintenance, use, dissemination and confidentiality of information in school records and reports shall be governed by written policies of the local board of education.

(12) School Fees.

(a) No fees or tuitions shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training. All school fees must be authorized by the local board of education. Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees.

(b) The following school fees may be requested from but not required of any student, regardless of financial status (including eligibility for free or reduced price lunch):

1. Fees for activities that occur during regular school hours (the required 180 instructional days), including field trips, any portion of which fall within the school day; or for activities outside regular school hours if required for credit or grade;

2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies; and

3. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.

(c) LEAs shall establish a process by which to waive the following school fees for students eligible for free or reduced price school lunches:

1. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses; and

2. Fees required for graduation ceremonies.

(d) Fee waiver process for students eligible for free or reduced price lunch. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of authorized fees that may be requested, and notice of the fee waiver process.

1. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire. However, if the parent chooses not to

pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.

2. Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers. Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.

3. Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.

(e) LEAs are authorized to require payment of the following fees by all affected students:

1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;

2. Debts incurred pursuant to paragraph thirteen (13) of this rule, Withholding of Student Grades for Debts Owed to the School;

3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;

4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and

5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

(13) Withholding of Student Grades for Debts Owed to the School.

(a) Local education agencies are authorized to withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken property that belongs to a local education agency, or has incurred a debt to a school, until such student makes restitution in full. Unpaid school fees, as defined above, may not be considered debts owed to the school.

(b) No student shall be sanctioned under the provisions of this rule when the student is deemed to be without fault for the debt owed to the local education agency or the school.

(c) Nothing in this subparagraph authorizes any local education agency to limit the rights of parents to have access to their children's educational records pursuant to the Family Educational Rights and Privacy Act.

(d) Local education agencies shall afford the student and/or the student's parent the opportunity to appear and be heard if such student and/or the parent disputes the debt, the amount of the debt, or the application of sanctions.

(14) School Board, District School Improvement Planning.

(a) School Board Improvement Plan. Each local board of education shall develop, maintain, and implement a long-range strategic plan that addresses at least a five (5) year period

of time. The plan shall be updated every two (2) years and include a mission statement, goals, objectives and strategies, and address the State Board of Education master plan.

(b) District and School Improvement Plan. Each local board of education shall have each school under its jurisdiction develop, maintain, and implement a school improvement plan. The plan shall be updated every two (2) years and include areas such as curriculum, instruction, professional development, and community partnerships, and address the long-range strategic plan of the local board of education.

(15) Multi-Hazard Emergency Operations Plans.

(a) Each local school system shall have a multi-hazard emergency operations plan to include, but not be limited to, fire, tornado, earthquake, flood, bomb threat, and armed intrusion.

(b) Each school shall practice emergency safety procedures.

(c) Each local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall implement earthquake preparedness drills in each of the schools administered by such local education agency. The Guidebook for Developing a School Earthquake Safety Program published by the Federal Emergency Management Agency shall serve as the model plan for local education agencies to consider when adopting plans for earthquake preparedness drills. Affected local education agencies shall review and consider the entire guidebook to assure that their schools provide the optimal safety conditions for their students.

(d) Each school administered by a local education agency having jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid Fault Line shall conduct at least two (2) earthquake preparedness drills every school year. A record of the earthquake preparedness drills, including the time and date, shall be kept in the respective schools and shall be made available upon request by the Department of Education.

(e) Each school that utilizes a two (2)-way communication system shall ensure teaches and other personnel are properly and adequately trained on the use of the system.

(f) Alternative schools must maintain a two (2)-way communication system.

(16) Automated External Defibrillator.

(a) Each public high school shall have an automated external defibrillator (AED) device placed within the school. Each public high school shall comply with the training, notification, and maintenance requirements relative to AEDs in accordance with all provisions of ~~§~~ T.C.A. § 68-140-04.

Authority: *T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-2-110, 49-2-114, 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105,* ~~49-6-626~~ *and Sections 30, 78 through 80, and 88 of Chapter 535 of the Public Acts of 1992.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed July 19, 1982; effective October 13, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed June 10, 1983; effective September 14, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996;*

effective August 28, 1996. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed September 6, 2007; effective January 28, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed March 25, 2010; effective August 29, 2010. Amendment filed December 19, 2012; effective May 30, 2012. Amendments filed March 21, 2012; effective August 29, 2012. Amendment filed February 6, 2013; effective July 29, 2013. Amendment to rule 0520-01-03-.03 (4) filed May 22, 2015; effective August 20, 2015.

0520-01-03-.05 STATE ACADEMIC STANDARDS.

(1) Academic Standards.

(a) The State Board of Education shall adopt academic standards for each subject area, grades kindergarten (K) through twelve (12). The standards shall specify learning expectations and include performance indicators. The approved standards shall be the basis for planning instructional programs in each local school system.

(b) Adopted textbooks shall be aligned with state academic standards.

(c) Instruction in grades kindergarten (K) through twelve (12) on issues of current concern such as character education, environmental education, economic education, career education, family life education, substance use and abuse, AIDS education, sexual abuse prevention, cardiopulmonary resuscitation, and safety shall be incorporated in appropriate subject areas and grade levels.

(2) Experimental Projects and Special Courses.

(a) Local school systems may offer special courses not listed in 0520-01-03-.06 that have been approved by the Department of Education. Each course must be approved in advance each year by the Department of Education. Each special course approved by the Department shall be recommended to that state board for an approval period of three (3) or six (6) years.

(3) Grading and Promotion.

(a) Each school shall evaluate and report in writing to the parent(s) or legal guardian(s) each student's progress in each subject, at least every nine (9) weeks, in accordance with the school system's evaluation plan. A parent or legal guardian will sign or otherwise acknowledge the report and return it to the teacher. Local school systems may choose not to require parental acknowledgement of the grade report for students in grades seven (7) through twelve (12). If parental acknowledgement is not required, schools must publish annually the dates and method of reporting student progress and must provide ample opportunities for parents to notify the school of any concerns.

(b) Local school systems shall develop and implement grading, promotion, and retention policies for grades kindergarten (K) through eight (8). The policies shall be communicated annually to students and parents.

(c) Local school systems shall use the state board adopted uniform grading system for students enrolled in grades nine (9) through twelve (12) for reporting student grades for the determination of eligibility for HOPE scholarships.

(4) Reserved.

Authority: *T.C.A. §§ 37-1-603, 49-1-204, 49-1-302, 49-1-304, 49-1-404, 49-6-101, ~~49-6-209~~, 49-6-407, 49-6-1003, 49-6-1005, 49-6-1006, 49-6-1007, 49-6-1008, 49-6-1202, 49-6-1203, 49-6-1204, 49-6-1205, 49-6-1302, 49-6-2202, 49-6-2203, and 49-6-3001(c)(3)(A).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed January 17, 1986; effective April 15, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 28, 1992; effective July 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed June 30, 2005; effective October 28, 2005. Amendments filed December 28, 2005; effective April 28, 2006. Amendments filed September 6, 2013; effective February 28, 2014. Amendment filed April 6, 2015; effective July 5, 2015.*

0520-01-03-.06 GRADUATION.

(1) Graduation Requirements - All students will have access to a rigorous education that will prepare them for success in postsecondary and the workforce. All coursework should be aligned to the Tennessee Academic Standards for that subject and course.

(a) High School Diploma.

1. The following twenty-two (22) credits shall be required for graduation:

English language arts	4 credits
Mathematics	4 credits
Science	3 credits
Social Studies	3 credits
Physical Education and Wellness	1.5 credits
Personal Finance	0.5 credit
Elective Focus	3 credits
Foreign Language	2 credits
Fine Arts	1 credit

2. To earn a regular high school diploma, students must: (1) earn the prescribed twenty-two (22)-credit minimum; (2) complete the ACT, SAT, or other eleventh (11th) grade assessment as determined by the commissioner of education; and (3) have a satisfactory record of attendance and discipline.

3. Students with disabilities will be included in regular classes to the degree possible and with appropriate support and accommodations. To earn a regular high school diploma, students with disabilities must earn the prescribed twenty-two (22)-credit minimum.

4. A special education diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who ~~have~~: (1) have not met the requirements for a regular high school diploma; (2) have satisfactorily completed an IEP; and (3) have satisfactory records of attendance and conduct. Students who obtain the special education diploma may continue to work toward a regular

high school diploma through the end of the school year in which they turn twenty-two (22) years old.

5. An occupational diploma may be awarded at the end of their fourth (4th) year of high school to students with disabilities who: (1) have not met the requirements for a regular high school diploma; (2) have satisfactorily completed an IEP; (3) have satisfactory records of attendance and conduct; (4) have completed the occupational diploma Skills, Knowledge, and Experience Mastery Assessment (SKEMA) created by the Department of Education; and (5) have completed two (2) years of paid or non-paid work experience. The determination that an occupational diploma is the goal for a student with a disability will be made at the conclusion of the student's tenth (10th) grade year or two (2) academic years prior to the expected graduation date. Students who obtain the occupational diploma may continue to work towards the high school diploma through the end of the school year in which they turn twenty-two (22) years old.

6. An alternate academic diploma may be awarded to students with significant cognitive disabilities at the end of their fourth (4th) year of high school who have: (1) participated in the high school alternate assessments; (2) earned the prescribed twenty-two (22) credit minimum; (3) received special education services or supports and made satisfactory progress on an IEP; (4) ~~have~~ satisfactory records of attendance and conduct; and (5) ~~have~~ completed a transition assessment(s) that measures, at a minimum, preparedness for postsecondary education and training; employment; independent living; and community involvement. The required credits may be earned either through the state-approved standards or through alternate academic diploma modified course requirements approved by the State Board. A student who earns an alternate academic diploma shall continue to be eligible for special education services under IDEA until he or she receives a regular high school diploma or through the school year in which the student turns twenty-two (22).

7. All full-time students in grades nine (9) through twelve (12) shall be enrolled each semester in subjects that produce a minimum of five (5) units of credit for graduation per year. Students with hardships and gifted students may appeal this requirement to the Director of Schools and then to the local board of education.

8. Students must complete four (4) credits of English, including English I, English II, English III, and English IV.

9. Students must complete four (4) credits of mathematics including, Algebra I and II, Geometry, or the equivalent Integrated Math I, II, and III, and another mathematics course beyond Algebra I or Integrated Math I. Students must be enrolled in a mathematics course each school year. Students who complete any of the required math credits prior to the ninth (9th) grade may receive graduation credit for that coursework; however, those students are still required to enroll in math during each high school year.

10. Students with a qualifying disability who have deficits in mathematics as documented in the individualized education program (IEP) shall be required to achieve at least Algebra I and Geometry (or the equivalent Integrated Math I and Integrated Math II). The required number of credits in math will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.

11. Students must complete three (3) credits of Science. Students must complete Biology, Chemistry or Physics, and a third lab science. Students with a qualifying

disability as documented in the IEP shall be required to achieve at least Biology I and two (2) other lab science credits. The required number of credits in science will be achieved through strategies such as, but not limited to, increased time, appropriate methodologies, and accommodations as determined by the IEP team.

12. Students must complete three (3) credits of Social Studies. The content of the social studies courses will be consistent with Tennessee Academic Standards and with admissions requirements of Tennessee public institutions of higher education. Required courses include United States History and Geography, World History and Geography, Economics, and United States Government and Civics.

13. Students must complete one-half (½) credit in Personal Finance. Three (3) years of JROTC may be substituted for one-half (½) credit of Personal Finance if the JROTC instructor attends the Personal Finance training.

14. Students must complete one (1) credit in wellness. The wellness courses will integrate concepts from health, physical fitness, and wellness and may be taught by a team of teachers from one (1) or more teaching areas, including health, physical education, family and nutrition sciences, and health sciences education.

    Participation in marching band and interscholastic athletics may not be substituted for this aspect of the graduation requirements. Credit earned in two (2) years of JROTC may be substituted provided the local system has complied with requirements of the State Board of Education.

    Credit for basic training may be substituted, upon the choice of the student, for the required credit in lifetime wellness and credit in one (1) elective course or for credit in two (2) elective courses.

15. Students must complete one-half (½) credit in physical education. This requirement may be met by substituting a documented and equivalent time of physical activity in marching band, JROTC, cheerleading, interscholastic athletics, school sponsored intramural athletics, and other areas approved by the local board of education.

16. Students must complete two (2) credits of the same Foreign Language. The credit requirement for foreign language may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.

17. Students must complete one (1) credit in Fine Arts. The credit requirement for fine arts may be waived by the local school district for students, under certain circumstances, to expand and enhance the elective focus.

18. Students must complete three (3) credits in an elective focus. All students will pursue a focused program of study designed to prepare them for the workforce and postsecondary study. The elective focus may be CTE, science and math, humanities, fine arts, AP/IB, or other areas approved by the local board of education. Students completing a CTE elective focus must complete three (3) credits in the same CTE career cluster or state-approved program of study. The director of schools may waive the third (3rd) credit requirement of the elective focus during a student's senior year, if the completion of the third (3rd) elective focus credit would prevent or delay graduation. This waiver option includes [illegible] students who transfer during the junior or senior year to a Tennessee high school from a school in another state or from a non-public school.

19. Every candidate for graduation must have received a full year of computer education at some point during the candidate's educational career pursuant to T.C.A. § 49-6-1010.

(b) Examinations.

1. End of Course examinations will be given in English I, English II, ~~English III,~~ Algebra I, Geometry, Algebra II, Integrated Math I, Integrated Math II, Integrated Math III, U.S. History, and Biology I~~, Chemistry, and Physics, upon development.~~ Students are not required to pass any one (1) examination, but instead students must achieve a passing score for the course in accordance with the State Board of Education's Uniform Grading Policy.

2. The Department of Education shall provide raw score data from the End of Course (EOC) examinations to each local education agency (LEA) for the purpose of including student scores on the EOC examinations into a student's final grade for the course. The weight of the EOC examination on the student's final average ~~shall be ten percent (10%) in the 2016-2017 school year, fifteen percent in the 2017-2018 school year; and~~ shall be determined by the LEA from a range of not less than fifteen percent (15%) and not more than twenty-five percent (25%). ~~in the 2018-2019 school year and thereafter.~~

   Each LEA must establish a local board policy that details the methodology used and the required weighting for incorporating students' scores on EOC examinations into final report card grades.

   Results of individual student performance from all administered EOC examinations will be provided to LEAS in time to facilitate the inclusion of these results as part of the students' grade. If an LEA does not receive its students' EOC examination scores at least (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' EOC examination scores in the students' final average.

3. As a strategy for assessing student readiness for postsecondary education, every public school student shall take either the ACT, SAT, or other eleventh (11th) grade assessment as determined by the commissioner.

4. All LEAs shall implement a project-based assessment in civics at least once in grades nine (9) through twelve (12) pursuant to T.C.A. § 49-6-1028.

5. ~~Beginning January 1, 2017, s~~Students must participate in the United States civics test during the candidate's high school career pursuant to T.C.A. § 49-6-408.

(c) Academic Program. All courses listed in State Board of Education Policy 3.205 may be offered for credit in grades nine (9) through twelve (12).

(d) Every local board of education shall develop a policy regarding the minimum and maximum units in any course or subject area for which a student may earn credit toward graduation.

(2) Testing for Credit.

(a) Local boards of education may adopt policies permitting students who are enrolled in grades nine (9) through twelve (12) and who have taken the equivalent of high school level courses to earn unit(s) of high school credit for these courses. Students may earn

credit toward graduation upon passing a comprehensive written examination in accordance with standards determined by the local board of education.

(b) High school credit may not be given by examination in American History.

(3) Work-Based Learning Experiences.

(a) Students will have access to a system of structured Wwork-Bbased Learning (WBL) experiences that allows them to apply classroom theories to practical problems and to explore career options.

(b) The state board's Work-Based Learning Framework will govern all WBL experiences. The Department of Education will provide school systems with a Work-Based Learning Policy Guide and a Work-Based Learning Implementation Guide to address training requirements, program expectations, and legal requirements. These documents will be reviewed annually by the Department of Education and will be updated as necessary for dissemination to school systems.

(4) Enrollment in College Level Courses.

(a) Local education agencies shall award high school credit to students who successfully complete college level courses aligned to a graduation requirement course, including general education and elective focus courses.

(b) Early admission into college may be considered for a twelfth (12th) grade student who has at least a 3.5 grade point average and a minimum ACT composite score of twenty-five (25) (or equivalent SAT score). A student must have written endorsement from the high school principal, counseling staff, and the partnering postsecondary institution. The written agreement shall include a review by the principal of the postsecondary coursework and verification that it is appropriate to substitute for any remaining graduation requirements for the student. Written agreements submitted by the student and the parents must be placed on file in the office of the principal.

(c) A qualified student enrolled in high school may enroll in a postsecondary institution and take college-level courses, which are taught at the high school, postsecondary institution, or online by postsecondary faculty or credentialed adjunct faculty. Students who take and pass dual enrollment courses at a postsecondary institution shall have their postsecondary credits accepted by their local high school for credit as a substitution for an aligned graduation requirement course, including general education and elective focus courses. State funds to the local school system shall not be diminished because of the student's participation.

(d) Local boards of education may adopt policies providing for college-level courses to be offered during the school day on the high school campus. Such courses must be taught by a licensed high school teacher or credentialed postsecondary faculty member approved by the local school system and partnering postsecondary institution. These courses are to be considered part of the high school program, with content and instruction subject to the supervision of the school principal and local board of education.

(5) The High School Equivalency Testing (HiSET) Program and the Issuance of Equivalency Diplomas.

(a) The testing program is operated in accordance with the HiSET manual of the Education Testing Service and the rules established by the Department of Labor and Workforce Development.

(b) The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification, and any other qualifications prior to admission to the testing session.

(c) A candidate must be eighteen (18) years of age before being eligible to take the HiSET test. A seventeen (17) year old may be allowed to take the examination upon recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.

(d) The HiSET test consists of five (5) core areas that count twenty (20) points each. In order to pass, the total composite score on the HiSET test shall not be less than forty-five (45) and no score on any one (1) core area of the test battery shall be less than eight (8).

Authority: *T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13), 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6001(g)~~, 49-6-6201~~, and Sections 30, 78 through 80, 88 of Chapter 535 of the Public Acts of 1992, and Public Chapter 448 (2013).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed July 18, 1974; effective August 17, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed April 13, 1982; effective May 28, 1982. Amendment filed September 28, 1982; effective December 15, 1982. Amendment filed January 19, 1983; effective April 18, 1983. Amendment filed September 28, 1983; effective December 14, 1983. Amendment filed January 6, 1984; effective April 15, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed March 25, 1986; effective June 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1987; effective October 28, 1987. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed September 20, 1987; effective December 29, 1987. Amendment filed November 18, 1987; effective February 28, 1988. Amendment filed April 18, 1988; effective July 27, 1988. Amendment filed May 13, 1988; effective August 29, 1988. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 22, 1988; effective February 28, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Amendment filed June 5, 1990; effective September 26, 1990. Amendment filed October 12, 1990; effective January 29, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed April 14, 1993; effective July 28, 1993. Amendment filed August 10, 1993; effective December 29, 1993. Amendment filed October 28, 1993; effective March 1, 1994. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed January 31, 1995; effective May 31, 1995. Amendment filed March 27, 1995; effective July 28, 1995. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed July 31, 2000; effective November 28, 2000. Amendment filed October 31, 2000; effective February 28, 2001. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed December 31, 2001; effective April 30, 2002. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed August 30, 2004; effective December 29, 2004. Amendments filed May 19, 2005; effective September 28, 2005. Amendments filed June 30, 2005; effective October 28, 2005. Amendment filed June 19, 2007; effective October 26, 2007. Amendments filed September 6, 2007;*

effective January 28, 2008. Repeal and new rule filed June 11, 2008; effective October 28, 2008. Amendment filed July 17, 2009; effective December 29, 2009. Amendment filed February 24, 2010; effective July 29, 2010. Amendment filed February 6, 2013; effective July 29, 2013. Amendment filed June 18, 2013; effective November 28, 2013. Amendments filed September 6, 2013; effective February 28, 2014. Amendments filed October 7, 2013; to be effective March 31, 2014. However, the State Board of Education filed a withdrawal of the rule. Amendments filed November 27,.2013; effective April 30, 2014. Amendment filed May 8, 2014; effective October 29, 2014. Amendment filed October 13, 2015; effective January 11, 2015. Amendment to rule 0520-01-03-.06 (1)(b) filed May 22, 2015; effective August 20, 2015. Amendment to rule 0520-01-03-.06 (3) filed May 22, 2015; effective August 20, 2015. Amendments filed December 30, 2015; effective March 29, 2016.

0520-01-03-.08 PUPIL PERSONNEL SERVICES

(1) Each local board of education shall develop standards and policies for:

(a) Attendance Services

(b) Guidance Services

(c) School Psychological Services

(d) School Social Work Services

(e) School Health Services

(2) The school health services program shall include but not be limited to the following:

(a) Each local school system shall have a written policy providing for a physical examination of every child entering school for the first time. A doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse shall perform this examination. No child shall be admitted to school without proof of immunization except those who are exempt by statute as provided in T.C.A. § 49-6-5001.

(b) Each local school system shall have a written policy providing for a physical examination of every student participating in interscholastic athletics. A doctor of medicine, osteopathic physician, physician assistant, or certified nurse practitioner shall perform this examination.

(c) Each local school system shall have a written policy for excluding pupils with communicable diseases and for readmitting them following recovery. In the case of diseases (listed in Regulations Governing Communicable Diseases in Tennessee: Tennessee Department of Health) the policy shall be in accordance with the recommendations of the State Department of Health as approved by the State commissioner.

(d) Each local school system shall have a written policy for handling drug/alcohol problems that may arise in the schools.

(e) Each local school system shall develop procedures for reporting suspected cases of child abuse and neglect as provided in T.C.A. § 37-1-403.

(f) After an offer of employment has been made to an applicant and prior to the commencement of the employment duties, each employee shall present a physician's certificate showing a satisfactory health record. Employees shall present a certificate

(Rule 0520-01-03-.08, continued)

thereafter at intervals determined by the State Department of Health and approved by the commissioner. The provisions of this subsection shall be administered in a manner consistent with the Americans with Disabilities Act (42 U.S.C.A. § 12101 *et. seq*) and the associated regulations (29 C.F.R. Chapter XIV, Part 1630 *et. seq*).

(g) HIV, HIV-Related Illness, and AIDS.

1. All children with HIV, HIV-related illness, and AIDS infection who enroll in the public school systems of Tennessee shall attend and participate in educational programs appropriate to meet medical and educational needs.

2. Each local school system shall:

   (i) Develop a comprehensive local AIDS plan that addresses appropriate education programs, confidentiality, liability, personnel, safety, curriculum, education, communications and public relations. The plan will be developed in conjunction with public health officials based upon guidelines approved by the State Board of Education.

   (ii) Include in the AIDS plan education/training programs for all school personnel, parents, and board members; and cooperate with other community organizations and state agencies in AIDS education for all citizens.

   (iii) Include in the AIDS plan a policy for personnel with HIV, HIV-related illness and AIDS infection. Employment conditions will be determined on a case-by-case basis. The review of individual cases will involve at a minimum the superintendent or designee, the employee's physician, and a public health official.

3. Information including names, records, reports, and/or correspondence and any other identifying information on HIV, HIV-related illness and AIDS infection status for any individual child or adult shall be maintained in confidence.

4. Local school systems and school personnel shall implement for all children and adults the universal precautions as defined by the State Department of Health for handling blood and other body fluids. Information about universal precautions and related safety procedures shall be distributed by the State Department of Education to all school systems and school personnel in Tennessee.

* HIV, HIV-related illness and AIDS infection are the three (3) terms used to denote the three (3) medically diagnosed stages of the infection caused by Human Immunodeficiency Virus. (AIDS - Acquired Immune Deficiency Syndrome; ARC - AIDS Related Complex; and HIV Infection - Human Immunodeficiency Virus antibodies detected in blood.)

Authority: *T.C.A. §§ 49-1-302, 49-1-302(a)(2) and (13).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Amendment filed July 22, 1987; effective October 28, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 16, 1989; effective February 28, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed October 11, 1995;*

(Rule 0520-01-03-.08, continued)

effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed November 30, 1999; effective March 29, 2000. Amendment filed April 30, 2001; effective August 28, 2001. Amendment filed April 17, 2006; effective August 28, 2006. Amendment to rule 0520-01-03-.08 filed June 11, 2008; to become effective October 28, 2008; was withdrawn August 4, 2008.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Darrell Cobbins	X				
Nick Darnell	X				
Bob Eby				X	
Mike Edwards	X				
Gordon Ferguson	X				
Lillian Hartgrove	X				
Elissa Kim	X				
Wendy Tucker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 09/21/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 11/19/18

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Subscribed and sworn to before me on: 11/19/18

Notary Public Signature: C. Griffin

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-03

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

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/11/19

Effective on: 4/11/19

Tre Hargett
Secretary of State

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PUBLIC INFO

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Approval of Charter Schools
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-13-126 authorizes the State Board of Education to promulgate rules and regulations for the administration of public charter schools. Chapter 698 of the Public Acts of 2018 provided local school boards 60 days to review and act upon an amended charter application.
EFFECTIVE DATES:	April 11, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Tennessee Code Annotated, Section 49-13-126 provides the State Board of Education with the authority to promulgate rules and regulations for the administration of public charter schools. This proposed rule amendment makes updates to align with Chapter 698 of the Public Acts of 2018 which provides local school boards 60 days to review and act upon an amended charter application. This new timeline will be applicable to the 2019 charter application cycle.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule does not have a financial 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;

T.C.A. § 49-13-126 provides the State Board with the authority to promulgate rules and regulations for the administration of public charter schools. This rule amendment makes updates to align with Chapter 698 of the Public Acts of 2018 which provides local school boards 60 days to review and act upon an amended charter application. This new timeline will be applicable to the 2019 charter application cycle.

(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;

T.C.A. § 49-13-126 provides the State Board with the authority to promulgate rules and regulations for the administration of public charter schools.

Chapter 698 of the Public Acts of 2018 provided local school boards 60 days to review and act upon an amended charter application.

(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;

The Tennessee Department of Education is directly affected by this rule and urges adoption of the rule.
The State Board of Education urges adoption of this rule.

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

N/A

(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;

N/A

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Nathan James Nathan.James@tn.gov Elizabeth Fiveash Elizabeth.Fiveash@tn.gov

(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

Nathan James Nathan.James@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-532-3528 Elizabeth Fiveash Elizabeth.Fiveash@tn.gov 9th Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)- 253-1960

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

N/A

Department of State
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Sequence Number: 01-17-19
Rule ID(s): 8254
File Date: 1/11/19
Effective Date: 4/11/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Amy Owen
Address:	1st Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-1776
Email:	Amy.Owen@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-14-01	Charter Schools
Rule Number	**Rule Title**
0520-14-01-.01	Approval of a Charter School

Redline

0520-14-01-.01 APPROVAL OF A CHARTER SCHOOL.

(1) The Commissioner of Education shall provide an application for charter school sponsors to use in applying for a public charter school and shall provide scoring criteria addressing the elements of the charter school application.

(2) All prospective charter school sponsors who intend to submit a charter application for consideration, including a charter school replication application, shall submit a letter of intent to both the Department of Education and to the appropriate chartering authority at least sixty (60) calendar days prior to the date on which the application is due. The letter of intent shall be completed on the form provided by the Department of Education.

(3) Failure to submit a letter of intent to both the Department of Education and to the appropriate chartering authority shall exclude a charter school sponsor from submitting an application for that application cycle.

(4) On April 1 of the year preceding the year in which the proposed public charter school plans to begin operation, the charter school sponsor seeking to establish a public charter school shall prepare and file the state charter school application with the chartering authority and the Department of Education. If the April 1 due date for charter applications falls on a Saturday, Sunday, or state observed holiday, the application materials shall be due on the next business day.

(5) In addition to the state charter school application, each chartering authority may ask charter school sponsors to address additional priorities as a means of evaluating "the best interests of the pupils, school district or community" (T.C.A. § 49-13-108). Charter school sponsors may choose not to address any of those priorities. Chartering authorities may not deny or refuse to review an application for failing to address additional priorities. Chartering authorities shall submit to the Department of Education by January 1 of each year all local application requirements.

(6) All local policies regarding the submission of charter school applications shall be consistent with state law, policies, rules, and regulations.

(7) Chartering authorities may charge an application fee of up to $2,500 for each application the charter school sponsor files.

(8) An application shall be considered complete if:

(a) The application is submitted on the Department of Education's state charter application form for that application cycle;

(b) The application contains all required information, materials, documents, attachments, and signatures; and

(c) The application fee, if required, is submitted with the application.

(9) Chartering authorities shall not be required to review and formally act upon an application if:

(a) The charter school sponsor did not submit a letter of intent by the required due date;

(b) The charter application is not complete as defined in paragraph (8); or

(c) The application and applicable fee is not submitted to the chartering authority by the required deadline.

(10) If a charter application is submitted but not reviewed, any required application fee shall be refunded to the charter school sponsor by the chartering authority.

(Rule 0520-14-01-.01, continued)

(11) Chartering authorities shall review all complete and timely applications in accordance with quality charter authorizing standards approved by the State Board.

(12) Approval of a charter application shall not be based on conditions or contingencies.

(13) The chartering authority shall rule by resolution, at a regular or special called meeting, on the approval or denial of a charter application within ninety (90) calendar days of the application due date. Applications may be submitted prior to the due date; however, all complete and timely applications shall be reviewed and acted upon within ninety (90) calendar days following the due date.

(14) Should the local board of education fail to either approve or deny a complete and timely charter application within the ninety (90) calendar day time limit, the application shall be deemed approved.

(15) If a charter school application is denied, the grounds upon which the local board of education based the decision to deny an application must be stated in writing, specifying objective reasons for the denial and the deadline by which the charter school sponsor must submit an amended application.

(16) If a charter school application is denied, the charter school sponsor shall have thirty (30) calendar days within which to submit an amended application to correct the deficiencies. The local board of education shall have sixty (60) ~~thirty (30)~~ calendar days from the deadline identified pursuant to paragraph (15) to either deny or approve the amended application. Amended applications may be submitted prior to the stated deadline; however, all applications shall be reviewed and acted upon within ~~thirty (30)~~sixty (60) calendar days following the deadline. Should the local board of education fail to either approve or deny the amended application within ~~thirty (30)~~sixty (60) calendar days, the amended application shall be deemed approved.

(17) A denial by the local board of education of an amended application to establish a public charter school may be appealed by the charter school sponsor, within ten (10) calendar days of the final decision to deny, to the State Board of Education.

(18) Within ten (10) calendar days of approval or denial of an amended charter application, the chartering authority shall report to the Department of Education whether the chartering authority has approved or denied the amended application. The chartering authority shall provide the D~~d~~epartment of Education a copy of the chartering authority's resolution setting forth the action taken and reasons for the decision.

Authority: *T.C.A. §§ 49-1-302, 49-13-106, 49-13-107, 49-13-108, and 49-13-126.* ***Administrative History:*** *Original rule filed March 31, 2003; effective July 29, 2003.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Nick Darnell	X				
Mike Edwards	X				
Bob Eby	X				
Gordon Ferguson	X				
Elissa Kim	X				
Lillian Hartgrove	X				
Wendy Tucker	X				
Darrell Cobbins	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 10/19/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Date: 11/14/2018

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

Subscribed and sworn to before me on: 11/14/18

Notary Public Signature: C. [illegible]

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-14-01-.01

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

Herbert H. Slatery III
Attorney General and Reporter

12/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/11/19

Effective on: 4/11/19

Tre Hargett
Secretary of State

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PUBLIC CHAPTERS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Charter Schools – Annual Authorizer Fee
STATUTORY AUTHORITY:	In 2017, the Tennessee General Assembly passed Public Chapter 307, known as the Tennessee High Quality Charter Schools Act. Pursuant to this legislation, this new rule seeks to provide clarity and consistency to the charter school authorizer fee process by establishing the Annual Authorizer Fee Rule. This provision of the High Quality Charter Schools Act has been codified at T.C.A. Section 49-13-128. The State Board of Education's rulemaking authority is codified in T.C.A. Section 49-13-126.
EFFECTIVE DATES:	April 11, 2019 through June 30, 2020
FISCAL IMPACT:	This rule has a financial impact on local education agencies (LEAs). Chapter 307 of the Public Acts of 2017 impacts LEAs by the amount of funds the LEA collects from the annual authorizer fees. The proposed rules do not result in any additional impact. For further information, please see the fiscal note regarding the proposed legislation that authorized the fee: http://www.capitol.tn.gov/Bills/110/Fiscal/HB0267
STAFF RULE ABSTRACT:	In 2017, the Tennessee General Assembly passed Public Chapter 307, known as the Tennessee High Quality Charter Schools Act. Pursuant to this legislation, this new rule seeks to provide clarity and consistency to the charter school authorizer fee process by establishing the Annual Authorizer Fee Rule. The rule allows LEAs to collect annual authorizer fees up to certain amounts set forth in legislation in order to support the operation of charter schools the LEA authorizes. In addition, the LEAs are required to report annually on the use of fees and to return any unused or misappropriated funds to the charter schools they have authorized.

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.

On June 26, 2018, the State Board conducted a rulemaking hearing on the charter school authorizer fee rule, and as a part of the rulemaking process, the State Board collected written and oral feedback on the draft rule. We received feedback from one LEA (Metro Nashville Public Schools), five charter operators, and one stakeholder group (TSBA). Based on this feedback, the authorizer fee rule was changed for final reading.

The most significant change to the rule from first reading to final reading was the charter schools will pay the authorize fee to LEAs rather than the district withholding the money from a BEP payment. This change was based on feedback from the charter schools that the rule should align to the statute which says that the LEA will "collect" the authorizer fee from the charter schools and to maintain the 100% pass through of state and local funds from the LEA to the charter schools which is currently in law.

The most significant feedback that was not included in the changes in final reading was to reduce the allowable authorizing obligations that the authorizer fee can cover. Since the State Board approved Policy 6.111 – Quality Charter Authorizing Standards which LEAs are required to adopt pursuant to statute, SBE staff and Department staff did not recommend limiting the rule in such a way that the fulfillment of these standards would not be an allowable expense.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

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 item has a financial impact on local education agencies (LEAs). Chapter 307 of the Public Acts of 2017 impacts LEAs by the amount of funds the LEA collects from the annual authorizer fees. The proposed rules do not result in any additional impact.

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;

In 2017, the Tennessee General Assembly passed Public Chapter 307, known as the Tennessee High Quality Charter Schools Act. Pursuant to this piece of legislation, this new rule seeks to provide clarity and consistency to the charter school authorizer fee process by establishing the Annual Authorizer Fee Rule. The rule allows LEAs to collect annual authorizer fees up to certain amounts set forth in legislation in order to support the operation of charter schools the LEA authorizes. In addition, the LEAs are required to report annually on the use of fees and to return any unused or misappropriated funds to charter schools they have authorized.

(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;

In 2017, the Tennessee General Assembly passed Public Chapter 307, known as the Tennessee High Quality Charter Schools Act. Pursuant to this piece of legislation, this new rule seeks to provide clarity and consistency to the charter school authorizer fee process by establishing the Annual Authorizer Fee Rule. This provision of the High Quality Charter Schools Act has been codified at T.C.A. § 49-13-128. The State Board's rulemaking authority is codified in T.C.A. § 49-13-126.

(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;

School districts (LEAs) and charter school operators are most directly affected by this rule. Representatives of LEAs and charter school operators provided public comment regarding this rule and are in support of the adoption of the final version.

The Tennessee Department of Education is also directly affected by this rule and urges adoption of the rule. The State Board of Education urges adoption of this rule.

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

N/A

(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;

This item has a financial impact on local education agencies (LEAs). Chapter 307 of the Public Acts of 2017 impacts LEAs by the amount of funds the LEA collects from the annual authorizer fees. The proposed rules do not result in any additional impact.

For further information, please see the fiscal note regarding the proposed legislation that authorized the fee: http://www.capitol.tn.gov/Bills/110/Fiscal/HB0267.pdf.

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Nathan James Nathan.James@tn.gov Elizabeth Fiveash Elizabeth.Fiveash@tn.gov

(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

Nathan James Nathan.James@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-532-3528 Elizabeth Fiveash Elizabeth.Fiveash@tn.gov 9th Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)- 253-1960

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

N/A

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For Department of State Use Only

Sequence Number: 01-18-19
Rule ID(s): 8255
File Date: 1/11/19
Effective Date: 4/11/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Amy Owen
Address:	Andrew Johnson Tower, 1st Floor 710 James Robertson Parkway
Zip:	37212
Phone:	615-532-1776
Email:	Amy.Owen@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-14-01	Charter Schools
Rule Number	**Rule Title**
0520-14-01-.05	Annual Authorizer Fee

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-14-01
CHARTER SCHOOLS

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0520-14-01-.05 Annual Authorizer Fee

0520-14-01-.05 Annual Authorizer Fee

(1) Pursuant to T.C.A. § 49-13-128, local education agencies (LEAs) that serve as the chartering authority of a charter school shall collect an annual authorizer fee that is a percentage of the charter school's per student state and local funding as allocated under T.C.A. § 49-13-112.

(2) The annual authorizer fee shall be the lesser of three percent (3%) of the annual per-student state and local allocations or $35,000 per school.

(3) The authorizer fee shall be paid by a charter school to its authorizing LEA in accordance with the payment process issued by the Department of Education.

(4) The annual authorizer fee collected by an LEA shall be recorded in the general ledger using the appropriate revenue code as determined by the Tennessee Comptroller and shall be subject to all audit and reporting requirements.

(5) The LEA shall use the annual authorizer fee exclusively for fulfilling the following authorizing obligations:

(a) Charter school application approval process, including:

1. Implementation of State Board approved quality authorizing standards; and

2. Stipends or travel for external reviewers.

(b) Interim review process required by T.C.A. § 49-13-121(d), including review of the progress of the school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the approved charter agreement.

(c) Charter school renewal process required by T.C.A. § 49-13-121, including:

1. Review of the renewal application;

2. Stipends or travel for external reviewers; and

3. Development of the renewal evaluation required to be submitted to each charter school.

(d) Monitoring and oversight activities, including:

1. Development of a performance framework;

2. Annual monitoring visits;

3. Data meetings;

4. Any software or data management tools required by the LEA exclusively for charter schools;

5. Monitoring of all legal requirements; and

6. School closure responsibilities outlined in T.C.A. § 49-13-130.

(e) Personnel costs for LEA staff supporting charter schools, including:

1. Salaries and benefits for full-time or part-time personnel with exclusive charter school responsibilities;

2. Salaries for LEA personnel who spend a portion of their time on direct charter school responsibilities. Any funds spent on salaries must be pro-rated to reflect the amount of time spent only on charter support work. Salaries for LEA personnel may only be paid for with authorizer fee funds if the activities and duties of the LEA personnel are beyond the scope and capacity of the LEA charter school office or personnel;

3. External consultants or other consultancy or legal fees to support LEA charter authorizing obligations; or

4. Reasonable costs associated with recruiting or hiring charter support or authorizing staff.

(f) Annual reporting, including:

1. Review of annual charter school performance reports required under T.C.A § 49-13-120;

2. Creation of the authorizer fee report required by T.C.A § 49-13-128(c);

3. Reporting of vacant and underutilized properties owned or operated by the LEA pursuant to T.C.A § 49-13-136; and

4. Reporting of student directory information required by T.C.A § 49-13-132.

(g) Ongoing charter school support services, including:

1. Interventions or authorizer-led supports;

2. Maintenance of facilities or other capital outlay obligations that are not otherwise outlined in a lease agreement between the authorizer and charter school;

3. Professional development, orientation, or onboarding of charter school employees; or

4. Contract services for specialized or targeted charter supports.

(6) By December 1 of each year, each LEA that collects an annual authorizer fee shall report to the Department of Education the total amount of authorizer fees collected in the previous school year and the authorizing obligations fulfilled using the fee. Reports shall be submitted on a reporting form developed by the Department of Education.

(7) Each authorizer fee report shall be posted on the Department of Education's website.

(8) If, for any school year, the total amount of authorizer fees collected by the LEA exceeds the amount used by the LEA to perform its authorizing obligations and responsibilities, the LEA shall distribute the amount remaining to its authorized public charter schools.

(9) Each authorizing LEA shall provide a projected charter school office budget for the upcoming school year to the Department of Education by August 1. The Department of Education shall post each projected budget to its website by August 15.

(10) Any excess funds collected by an LEA shall be distributed to its authorized public charter schools in the fiscal year immediately following the fiscal year in which the excess fees were collected by the LEA and in accordance with the process established by the Department of Education.

(11) If the Department of Education determines funds were used by the LEA for activities other than the authorizing obligations outlined in this Rule, the Department of Education shall withhold an amount equal to the misallocated funds in the following fiscal year from the LEA and shall distribute the misallocated funds directly to the public charter schools.

(12) If an LEA does not receive timely payment from an authorized charter school in accordance with Paragraph 3 of this rule, the LEA shall be entitled to any past due amount from the authorized charter school in accordance with the payment process issued by the Department of Education.

(13) Each charter school shall receive a proportionate share of any excess or misallocated funds collected by the LEA based on the actual amount of authorizer fee funds paid to the LEA by each charter school.

Authority: *T.C.A. §§ 49-1-302, 49-13-106, 49-13-107, 49-13-108, 49-13-126, and 49-13-128.*
Administrative History:

* 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)
Darrell Cobbins	X				
Nick Darnell	X				
Bob Eby				X	
Mike Edwards	X				
Gordon Ferguson	X				
Lillian Hartgrove	X				
Elissa Kim	X				
Wendy Tucker	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education (board/commission/ other authority) on 09/21/2018 (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: *04/24/2018*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/26/2018*

Date: 11/26/2018

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Subscribed and sworn to before me on: 11/26/18

Notary Public Signature: C. Griffin

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-14-01 Charter Schools

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

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/11/19

Effective on: 4/11/19

Tre Hargett
Secretary of State

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DEPARTMENT OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Standards for School Administered Child Care Programs
STATUTORY AUTHORITY:	In accordance with T.C.A. Sections 49-1-1101 through 1109, the Department of Education is mandated to inspect and approve all programs subject to the State Board's jurisdiction pursuant to T. C.A. Section 49-1-302(1). This includes all public and private school-administered infant/toddler, preschool, and before- and after-school programs as well as approved Montessori programs, TEIS early intervention programs, school-based and community-based Lottery Education Afterschool Programs, and 21st Century Community Learning Centers. These programs must be in compliance with standards for infant/toddler, preschool, and school-age extended care programs, adopted by the State Board and certified by the Department of Education and verified through inspection by the Department's child care program evaluators.
EFFECTIVE DATES:	April 25, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This proposed rule includes the following changes: • Updates definition of "school-age child"; • Updates definition of "school-administered"; • Clarifies requirements for transportation drivers including a pre-employment drug screening and annual random drug screening; additionally, clarifies drivers only providing transportation for field trips do not have to have CPR and First Aid certification;

• Outlines requirements for a bathroom supervision plan;

• Adds ability for children age 2 ½ to be permitted to enter the 3-6 year old classroom;

• Clarifies the required student age for class assignment;

• Outlines criteria that must be met in order for parents or guardians to be included in the adult: child ratio for off-site activities;

• Clarifies staff must receive training annually;

• Establishes requirements for part-time teachers and teaching assistants;

• Streamlines language for age requirements and staffing;

• Clarifies the calculation of usable space;

• Adds the P endorsement to the requirements for public school bus drivers;

• Corrects language for when the bus requires an adult monitor; and

• Clarifies training requirements for new employees.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule does not have a financial 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;

Changes throughout this rule include:

- Updated definition of "school-age child."
- Updated definition of "school-administered."
- Clarifies requirements for transportation drivers including a pre-employment drug screening and annual random drug screening. Additionally, clarifies that drivers only providing transportation for field trips do not have to have CPR and First Aid certification.
- Outlines requirements for a bathroom supervision plan.
- Adds ability for children age 2 ½ to be permitted to enter the 3-6 year old classroom.
- Clarifies the required student age for class assignment.
- Outlines criteria that must be met in order for parents or guardians to be included in the adult: child ratio for off-site activities.
- Clarifies staff must receive training annually.
- Establishes requirements for part-time teachers and teaching assistants.
- Streamlines language for age requirements and staffing.
- Clarifies the calculation of usable space.
- Adds the P endorsement to the requirements for public school bus drivers.
- Corrects language for when the bus requires an adult monitor.
- Clarifies training requirements for new employees.

(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;

In accordance with T.C.A. §§ 49-1-1101-1109, the Department of Education is mandated to inspect and approve all programs subject to the State Board's jurisdiction pursuant to T.C.A. § 49-1-302(l). This includes all public and private school-administered infant/toddler, preschool, before- and after-school programs as well as approved Montessori programs, TEIS early intervention programs, school-based and community-based Lottery Education Afterschool Programs, and 21st Century Community Learning Centers. These programs must be in compliance with Standards for Infant/Toddler, Preschool, and School-Age Extended Care Programs, adopted by the State Board and certified by the Department of Education and verified through inspection by the Department's child care program evaluators.

(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;

Local education agencies (LEAs) that offer school-administered child care programs are most directly affected, as are employees of and parents who send their children to such programs. The Department of Education sent a draft of this rule to all LEAs and did not receive feedback either encouraging or discouraging the adoption of this rule.

The Tennessee Department of Education is also directly affected and urges adoption of this rule. The State Board of Education urges adoption of this rule.

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

N/A

(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;

N/A

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(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

Nathan James
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1st Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)-532-3528

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
9th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
(615)- 253-1960

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

N/A

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-24-19
Rule ID(s): 0520
File Date: 1/25/19
Effective Date: 4/25/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Amy Owen
Address:	1st Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-1776
Email:	Amy.owen@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-12-01	Standards for School Administered Child Care Programs
Rule Number	**Rule Title**
0520-12-01-.01	Introduction
0520-12-01-.02	Definitions
0520-12-01-.03	Program Approval
0520-12-01-.05	Program Organization and Administration
0520-12-01-.06	Program Operation
0520-12-01-.07	Staff
0520-12-01-.09	Program
0520-12-01-.10	Health and Safety
0520-12-01-.11	Food
0520-12-01-.12	Physical Facilities

Chapter Number	Chapter Title
0520-12-01	Standards for School Administered Child Care Programs
Rule Number	**Rule Title**
0520-12-01-.13	Transportation
0520-12-01-.14	Care of Children with Special Needs
0520-12-01-.15	School Age Before and After School Programs

RULES
OF
THE STATE BOARD OF EDUCATION
OFFICE OF THE COMMISSIONER

CHAPTER 0520-12-01
STANDARDS FOR SCHOOL ADMINISTERED CHILD CARE PROGRAMS

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0520-12-01-.15 School-Age Before and After School Programs
0520-12-01-.16 Civil Penalties

0520-12-01-.01 INTRODUCTION.

Pursuant to T.C.A. § 49-1-302, these rules are applicable to the following programs and are subject to monitoring by the Department of Education:

(a) Public school administered early childhood education programs;

(b) Programs operated by private schools as defined by § 49-6-3001(c)(3);

(c) Child care provided by church affiliated schools as defined by § 49-50-801;

(d) State approved Montessori school programs;

(e) Before or after school child care programs operated pursuant to §§ 49-2-203(b)(11) and 49-6-707;

(f) Programs providing center-based early intervention services through Tennessee Early Intervention Services; and

(g) Child care provided in federally regulated programs including Title I preschools, 21st Century Community Learning Centers and all school administered head start and even start programs.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-201(c)(24), 49-1-302(l), 49-1-1101 through 49-1-1109, 49-2203(b)(11), 49-5-413 and 49-6-707.* ***Administrative History:*** *Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.02 DEFINITIONS.

For purposes of this Chapter the following definitions are applicable:

(1) Administrative Hearing. A hearing that is held under the Administrative Procedures Act rather than a court of law. The purpose of the hearing is to allow an agency the opportunity to challenge enforcement actions taken by the Department.

(2) Adolescence. The period of physical and psychological development from the onset of puberty to maturity.

(3) Annual Certificate of Approval. Certificate issued by the Department of Education to programs that have satisfactorily completed the temporary certificate of approval time period and is reissued on an annual basis as long as the program meets the standards of the Department and the rules of this Chapter.

(4) Approved Capacity. The designated maximum number of children permitted in a facility as determined by the department based upon usable space, age of children, adult: child ratios, and group size. Capacity shall be designated on the certificate of approval.

(5) Child. A person under eighteen (18) years of age.

(6) Child's Age. The age of child on August 15 of any given year.

(7) Child Care. The provision of supervision, protection, and at a minimum, the basic needs of a child or children for more than three (3) hours a day, but less than twenty-four (24) hours a day.

(8) Child Care Advisory Council. A ten (10) member council established by T.C.A. § 49-1-302 to advise the State Board of Education in the establishment of child care standards and regulations and to act as a hearing tribunal for appeals from actions of the State Department of Education regarding the certificate of approval issued to child care programs.

(9) Child Care Program. Any public school administered early childhood education programs; programs operated by private schools as defined by § 49-6-3001(c)(3); child care provided by church affiliated schools as defined by § 49-50-801; state approved Montessori school programs; before or after school child care programs operated pursuant to §§ 49-2-203(b)(11) and 49-6-707; programs providing center-based early intervention services through Tennessee Early Intervention Services; child care provided in federally regulated programs including Title I preschools, 21st Century Community Learning Centers and all school administered head start and even start programs.

(10) Civil Penalty. A penalty placed upon a program for each violation of a statute, rule, or order pertaining to such person or entity in an amount ranging from fifty dollars ($50.00) to one thousand dollars ($1,000.00). Each day of continued violation constitutes a separate violation as indicated by T.C.A. § 49-1-1107(c)(1).

(11) Commissioner. The executive head of the Department of Education, appointed by the Governor.

(12) Conventional Care. Child care services provided between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

(13) Department (TDOE).The Tennessee Department of Education and its representatives.

(14) Developmentally Appropriate. Practices which use the knowledge of child development to identify the range of appropriate behaviors, activities, and materials for specific age groups. This knowledge is used in conjunction with an understanding about children's growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. A developmentally appropriate curriculum provides for all areas of a child's development, physical, emotional, social, and cognitive, through an integrated approach. For children from birth to five (5) years of age, the Tennessee Early Learning Development Standards is adopted by the State Board of Education for guidance in appropriate learning expectations.

(15) Director. The person with overall responsibility for the child care program.

(16) Group. A specific number of children comprising an age range, assigned to specific staff in an assigned space that is divided from the space of other groups by a recognizable barrier.

(17) Home School. The provision of full-time educational services, as recognized by the Department of Education, to a child by the child's parent in the child's primary residence. Any early childhood program attached to a home school program falls under the jurisdiction of the Department of Human Services (DHS).

(18) Infant. A child who is six (6) weeks through twelve (12) months of age.

(19) Kindergarten. A school or class that prepares children for first grade and is part of a public or private school system. Kindergarten programs in the public school system must comply with the Minimum Kindergarten Program Law pursuant to T.C.A. § 49-6-201. To enter kindergarten, a child must be five years old by August 15.

(20) Law. Statutory or regulatory provisions affecting the operation of an early childhood program including, but not limited to, the law as contained in T.C.A. § 49-1-302(l) and T.C.A. § 49-1-1101 through 49-1-1109, and Chapter 0520-12-01 of the State Board Rules.

(21) Mixed Age Grouping. Mixed age group can also be referred to "heterogeneous or multi-age". A group of children with varying ages that are combined to maximize the educational benefits in a non-traditional classroom. All mixed age group classrooms shall not exceed the maximum group size and must maintain adult: child ratios.

(22) Non-school, Community-based Organization Program. An infant/toddler, preschool or school age before and after school program operated through contract with the Department of Education and under the certificating authority of the Department of Education.

(23) Off-site Activity. Any activity which occurs away from the general premises of the child care program's facility.

(24) Parent. A biological, legal, or adoptive parent, guardian, or legal or physical custodian who has primary responsibility for a child.

(25) Pre-kindergarten. A class or program prior to kindergarten for children that are four (4) years old by August 15.

(26) Preschool. A program providing child care services to children who are six (6) weeks through five (5) years of age and not in kindergarten, including children who are more specifically defined under this subchapter as an "infant" or a "toddler."

(27) Program. Any public or private school-administered preschool, pre-kindergarten, or school-age care program, including community based programs funded by Voluntary Pre-K, Pre-K, Lottery Education Afterschool Programs (LEAPs), and 21st Century Community Learning Center (21st CCLC) programs that serve a minimum of one (1) child, is subject to the jurisdiction of the Office of School-based Support Services. Exception: fee based and 21st CCLC funded before and after care programs that operate less than three (3) hours per day or less than fifteen (15) hours per week.

(28) Related. Any children of the following relationships by marriage, blood, or adoption; children, step-children, grandchildren, siblings, step-siblings, nieces, and nephews of the primary caregiver. The term "related" includes any "grand" or "great" relationship (e.g. great niece, great grandchild, etc.) within the relationships indicated.

(29) School-age Child. ~~A child who is five (5) years of age to seventeen (17) years of age, by August 15, and currently enrolled in kindergarten through twelfth (12th) grade.~~A child who is five (5) years of age and enrolled in kindergarten (K) through seventeen (17) years of age. A five (5) year-old may be classified as a school--age child in the summer immediately preceding the child's fall entry into kindergarten.

(30) School-administered. A program that is serving five (5) or more kindergarten [illegible] grade twelve (12) students ~~school-age children~~ and is run by a public or private school ~~and is housed in conjunction with an elementary, middle, or high school T.C.A. § 49-6-3001~~.

(31) Staff. Full and part-time teachers, employees, or unpaid volunteers of the program.

~~(31)~~(32) Teacher. The person, persons, entity or entities directly responsible for providing for the supervision, protection, and basic needs of the child.

~~(32)~~(33) Temporary Certificate of Approval. A certificate issued by the Department to a new child care program allowing and authorizing the program to begin child care operations while the program attempts to attain full compliance with all applicable regulations.

~~(33)~~(34) Toddler. A child who is eleven (11) months through twenty-three (23) months of age.

~~(34)~~(35) Umbrella Program. An umbrella program that oversees the homeschooling of children to fulfill government educational requirements. TDOE does not recognize umbrella early childhood programs as school-administered.

~~(35)~~(36) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

0520-12-01-.03 PROGRAM APPROVAL.

(1) All persons or entities operating a child care program must be certified by the Department of Education.

(2) A school-administered child care program seeking approval shall submit an application to the Department of Education that contains the following information:

(a) Satisfactory evidence that the facility that is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable to care for the children and that the applicant has the ability and intent to comply with the certificate of approval law and regulations;

(b) Three (3) satisfactory references for the program director;

(c) Verification that the program director's qualifications meet the requirements of Chapter 0520-12-01-.07;

(d) Verification that all program staff have successfully completed a criminal history background check as required by T.C.A. § 49-5-413; and

(e) Verification of enrollment of at least five (5) school-aged children enrolled in kindergarten through grade twelve (12).

(3) Upon receipt and approval of an application the department shall conduct an on-site inspection to ensure the site is suitable for child care activities and does not endanger the welfare or safety of children. Upon satisfaction of the on-site inspection by the department, the program shall be

provided a temporary certificate of approval.

(4) Within ninety (90) days of the issuance of the temporary certificate, the Department shall determine if the applicant has complied with all regulations and requirements necessary to receive an annual certificate of approval. During the temporary certificate of approval period:

(a) The Department shall perform a minimum of two (2) visits to the program at least one (1) of which shall be unannounced.

(b) The Department shall perform at least one (1) observation of the teachers' interaction with children.

(c) The program must provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable regulations. The failure to obtain and maintain compliance with all applicable regulations during the period of temporary approval may result in the revocation of the temporary certificate of approval.

(5) On or before the expiration of the temporary certificate of approval, the Department shall:

(a) Issue an annual certificate of approval to a program that has satisfied the requirements for the ninety (90) day temporary approval;

(b) Issue a restricted temporary certificate that limits a program's authority in one (1) or more areas of operation if the Department determines that the conditions of the facility, the methods of care or other circumstances warrant it; or

(c) Deny the annual certificate of approval if the Department determines that any of the requirements set forth in this Chapter have not been, or cannot be, satisfactorily met.

(6) A certificate of approval is not transferable from one location to another or from one agency to another.

(7) The certificate of approval may be revoked at any time upon ninety (90) days' notice to the agency. If the health, safety, or welfare of the children in care imperatively requires it, the certificate of approval shall be revoked immediately.

(8) To renew an annual certificate of approval, approved programs shall submit an annual report to the department prior to October 1. Any entity not completing the annual report by October 1, shall be notified and if a report is not submitted the certificate of approval shall be suspended.

(a) The report shall include:

1. Current enrollment figures;

2. Identification information;

3. A description of the services to be offered to children and parents and reasons these services are needed at the proposed location;

4. Ages of children to be served;

5. Hours of operation;

6. A description of meal provision or preparation;

7. Admission requirements and enrollment procedures;

8. Provision for emergency medical care;

9. Transportation Plan; and

10. Demonstration of compliance with all laws and regulations governing the program.

(b) If, after being approved, a ~~child care provider~~school wishes to change the scope or type of service offered to children and families, an amended report shall be filed with the Department for approval prior to implementation.

(9) A program that submits a satisfactory annual report and demonstrates a reasonable probability that the program can maintain compliance with all laws and regulations during the annual certification period, shall be issued a new annual certificate of approval by the department.

(10) Throughout the temporary certification period and during the annual re-evaluation period, immediate access to all areas of the school or program ~~child care facility~~ shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, Department of Children's Service, etc.) during operating hours.

(11) Any program found in operation without oversight from the department of education ~~is found to be running an illegal operation and~~ will be reported to local authorities as indicated by T.C.A. § 49-1-1105(a).

(12) If the Department determines, as a result of its inspections or investigations or those of other local, state or federal agencies or officials, or through any other means, that a plan is necessary to insure the safety of the children in the care of the program the Department may require the program to implement a safety plan. The safety plan may require, but is not limited to, the exclusion or restriction of any individuals from access to children, the closure or restriction of any part of the program, the modification or elimination of services, the re-inspection of the program, the training of management, staff, or volunteers.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-201(c) (24), 49-1-302(l), 49-1-1101 et seq. through 49-1-1109, 49-2-203(b) (11), and 49-5-413.* ***Administrative History:*** *Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.05 PROGRAM ORGANIZATION AND ADMINISTRATION.

(1) Each program shall have an adequate budget for the financial support of the program. Adequate financing of the center's operation shall be maintained throughout the year.

(a) Proposed budgets and other relevant financial records shall be available to the Department of Education upon request.

(b) If any program is the subject of any bankruptcy or receivership petition or order, or any other action that may affect the financial status or operational status of the program, including but not limited to foreclosure notices, liens, etc. or, if any program is the subject of any local, state or federal regulatory action, such as but not limited to, the fire safety, health, environmental zoning or local, state or federal grant compliance status or tax enforcement proceedings, the program's management shall immediately notify the Department and shall provide current documentation of the status of the program, including copies of necessary administrative and/or court legal documents applicable to that status.

(2) General liability, automobile liability and medical payment insurance coverage shall be maintained on the operations of the program's facilities and on the vehicles owned, operated or leased by the program and as follows:

(a) General liability coverage on the operations of the program's facilities shall be maintained in a minimum amount of five hundred thousand dollars ($500,000) per occurrence and five hundred thousand dollars ($500,000) general aggregate coverage.

(b) Medical payment coverage shall be maintained in the minimum amount of five thousand dollars ($5,000) for injuries to children resulting from the operation of the program.

(c) Automobile coverage for programs that transport children:

1. Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars ($500,000) combined single limit of liability.

2. Medical payment coverage shall be maintained in the minimum amount of five thousand dollars ($5,000) for injuries to children being transported in vehicles owned, operated or leased by the program.

(d) The requirements of this paragraph shall not apply to a program that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has a self-insurance program that provides, as determined by the Department, the coverage and the liability limits required by these rules.

(e) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the program and shall be available for review by the Department.

(3) Enrollment.

(a) A program shall not enroll a child into care until the parent or guardian has supplied the program with a completed application, Tennessee Department of Health Official immunization record (for children over two (2) months of age), and a health history.

(b) Exceptions to this immunization requirement may be made only if:

1. The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization;

2. The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices; or

3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Program must have a written plan for obtaining records for children who are homeless and/or in state custody.

(c) Programs may not deny enrollment to students based on citizenship status. (*Plyler v. Doe, 457 U.S. 202, 1982*).

(d) Enrollment of children under six (6) weeks of age is prohibited.

(e) The program shall maintain documentation that the parent was offered an on-site visit of the program to review the facility and the opportunity to review the program's policies and procedures prior to the child being enrolled into the program. Exception: On-site visit is not required for children of homeless families.

(f) Enrollment of children shall be allowed throughout the year, as long as the requirements

set forth in these rules are met.

(4) Each program shall implement a plan for regular and ongoing communication with parents. This plan shall include but not be limited to communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care.

(a) Parents or guardians shall be provided a parent handbook outlining the program's policies, procedures, and the requirements of this Chapter upon admission of the child. The program's parent handbook shall include, at a minimum:

1. Criteria for the disenrollment of children (expulsion policy);

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk;

3. Behavior management techniques;

4. Rates and late fee policy;

5. Hours of operation;

6. Emergency plan and inclement weather policy;

7. Smoke free environment; and

8. Meal service policy.

(b) The program shall require the parent to sign for receipt of the policies and summary of the requirements of this Chapter, and the signed receipt shall be maintained by the program in the child's file.

(c) Parents shall be permitted to see the professional credential(s) of program staff upon request.

(d) An abuse prevention awareness program or abuse prevention awareness information for parents shall be offered at least once a year. The program shall include a child abuse prevention component, approved by the Department of Education, with information on the detection, reporting, and prevention of child abuse in child care centers and in the home.

(e) After issuing two (2) formal notices of violations in compliance with rules, a Notice of Probation, or after issuing any type of legal enforcement order, the Department may, in its discretion, require the program to notify parents and funding sources of the circumstances.

(f) The Department may, at its discretion, notify parents and funding sources of any decision affecting the program rendered by the State Board of Education Child Care Advisory Council serving in the role of Hearing Board for appeals or by any court.

(5) Release of Children

(a) Parents shall give written permission in advance of the child's removal from the premises, including prior notification and consent for each off-site activity, except in cases of emergencies or investigative -procedures -conducted pursuant to the child protective services laws or other applicable laws.

(b) Children shall be signed in and out of the program by the legal guardian persons authorized on the list to pick up the child~~custodial parent~~. Students transported to the program pursuant to 0520-12-01-.13 may be signed in and out by the appropriate staff person. Program staff shall verify parental authorization and the identity of any person to

whom a child is released.

(c) Children shall only be released to a~~a responsible~~ designated person in accordance with the child release plan. The program shall verify the identity of the authorized person by requiring presentation of a photo identification. The person to whom the child is released must sign the child out of the program.

(d) Children should not be released to anyone whose behavior, as deemed by a reasonable person, may place him/her in imminent risk. Immediately call 911, the local law enforcement agency or other emergency services number prior to the release of children. If the person, displaying risky behavior, is not the parent, the program shall not release the child and the parent shall be called immediately.

(e) During operating hours, parents shall be permitted access to their children. Programs shall develop a policy and implementation plan regarding non-custodial parent access and/or denial of access to children. The policy and implementation plan shall be provided to all parents. (The policy may be included in the parent handbook.)

(f) A parent shall be notified before the child leaves the premises except in emergency circumstances. An authorized investigator with the Department of Children's Services or local law enforcement may take a child off the premises of the program if he/she has obtained custody of the child as follows:

1. Voluntary placement agreement with the parent;

2. Court order;

3. Emergency assumption of custody under T.C.A. § 37-1-113 without parental permission;

4. The child's parent or legal guardian is present and approves; or

5. In conjunction with investigative procedures under the child abuse laws.

(6) Incidents, accidents and injuries shall be reported to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.

(a) Incidents, accidents and injuries to children shall be documented immediately as follows:

1. Date and time of occurrence;

2. Description of circumstances; and

3. Action(s) taken by the program.

(b) Documentation of incidents, accidents and injuries to children shall be filed in the child's record no later than one (1) business day immediately following the occurrence.

(c) The Department shall be notified of any child fatality at the program no later than one (1) calendar day immediately following the death.

(7) All programs must comply with the following record requirements for children and staff:

(a) All records shall be maintained in an organized manner and shall be made ~~immediately~~ available to the Department upon request.

(b) Children's Records shall include:

1. A current information form, which shall be updated annually and as changes occur and which shall include:

   (i) The child's name and date of birth;

   (ii) Name of parent(s);

   (iii) Child's and parents' home address (or addresses) and phone numbers;

   (iv) Parents' business addresses, phone numbers, and approximate work hours;

   (v) Any special needs or relevant history of the child or the child's family; and

   (vi) The name and address (home and business or school) of a responsible person to contact in an emergency if parent(s) cannot be located promptly.

2. Name, address, and telephone number of a physician to call in case of an emergency.

3. Written consent of parent(s) regarding emergency medical care.

4. A written plan stating to whom the child shall be released.

5. Written transportation agreement between parent and the program regarding daily transportation between home and the program and the program and school. If parents have a third party transportation arrangement, verification and details of the arrangement shall be maintained in the child's file.

6. A copy of the child's health history provided by the child's parent or other caretaker, which need not be signed or certified by a health care provider, shall be on file in the program and shall be available to appropriate staff.

7. Daily attendance records for each child to include time in and time out.

8. Prior written permission of parent for each off-site activity.

9. Immunization Record.

(c) A child's records shall be kept for one (1) year following the child's leaving the agency; provided, however, that the health record shall be returned to the child's parent upon request when the child leaves the agency. Records of children enrolled in pre-kindergarten programs may be made part of the child's cumulative file.

(d) Additional information for infants, toddlers and all non-verbal children shall be recorded and shared with parents daily as follows: the time and amount of feeding, any incidence of excessive spitting up, toileting and/or times of diaper changes, sleep patterns, and developmental progress. Before a child under the age of thirty (30) months of age is accepted for care, the parent shall provide proof of a physical examination within three (3) months prior to admission, signed or stamped by a physician or health care provider. This record must be kept on file at the program.

(e) School-age children's records shall include:

1. An information form that list the name, address, and phone number of the school the child attends;

2. If the school-age program is not located within the school in which the child is enrolled, the program shall have on file a statement from the parent (or the school) that the child's immunizations are current and that his/her health record is on file at the specified school which the child attends;

3. The records of any child who is five (5) years old in a center which lacks approved kindergarten status for purposes of T.C.A. § 49-6-201 shall include a signed acknowledgment from the child's parents that recognizes that the child's attendance does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in first grade. The statement of acknowledgment shall be maintained in the child's file; and

4. Written authorization from a physician for the self-administration of medication for the current school year, if applicable.

(f) Staff records shall include:

1. Name, birth date, social security number, (used by the employer for Federal/State tax purposes), address, and telephone number of all staff members and a contact for each staff member in an emergency;

2. Educational background and educational experiences, including dates and places of diplomas received, teaching license if applicable, and conferences, courses, and workshops attended ~~in the preceding~~ throughout the year;

3. Documentation signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant, verifying that the staff person is capable of safely and appropriately providing care for children in a group setting. The documentation shall be on file within ten (10) calendar days of employment or starting to work. An updated statement of each staff member's physical health shall be obtained every third (3rd) year, or more often if deemed necessary by the Department;

4. At least three (3) references from non-relatives, either written or with documented interviews of each reference on each staff member;

5. Written, verified record of employment history;

6. Documentation of annual performance reviews;

7. Daily attendance (including time in/out) of staff;

8. Signed and completed criminal history disclosure form;

9. Verification of criminal background check and Vulnerable Persons Registry results;

10. Documentation of trainings to include all pre-service training hours; and

11. Date of employment and date of separation from the program.

12. Driver records shall additionally contain:

(i) Copy of driver's license showing proper endorsement;

(ii) Verification of a passed pre-employment ~~annual~~ drug screen; ~~and~~

~~(iii)~~ Verification that the driver is included in every randomly generated pool of drivers for all annual random drug screening and proof of a passed drug

test every time the driver is randomly selected to

(iv) Verification of Cardiopulmonary Resuscitation (CPR) and First Aid certifications. Drivers only providing transportation for [illegible] with a program staff on board are not required to have CPR [illegible] First Aid certification.

(g) Staff records shall be maintained for at least one (1) year following the separation of the staff from the program. Date of separation should be placed on the staff form.

(h) Records of volunteers shall be maintained and must include names, addresses, telephone numbers and dates of service of all volunteers.

(i) Records of substitutes shall be maintained and include the names, addresses, telephone numbers and dates of service of all substitutes.

(8) The program staff shall not disclose or knowingly permit the use by other persons of any information concerning a child or family except as required by law, regulation or court order, or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for health, safety, or welfare of any child enrolled in the program or the child's family.

(9) Programs shall meet the following requirements for the posting of documentation:

(a) During the hours of operation, the current certificate of approval shall be posted near the main entrance in a conspicuous location.

(b) The Department of Human Services' toll-free complaint number shall be posted in a conspicuous location.

(c) The Department of Children's Services' child abuse number shall be posted near the main entrance in a conspicuous location and at each telephone.

(d) A copy these state board rules shall be maintained in a central space and available to all staff and parents.

(e) No smoking signs shall be posted in a conspicuous manner.

(f) The program shall post any other materials as directed by the Department.

Authority: *T.C.A. §§ 4-5-201 et seq., 37-1-403(a)(8) 49-1-302(l), 49-1-1101 through 49-1-1109, 49-62101, 49-6-2105, 49-6-2107, 49-6-2108, 49-2-2110, 49-6-2114, 49-6-2116, 55-9-602 et seq., 55-50-301 et seq. and 55-50-401 et seq.* ***Administrative History:*** *Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.06 PROGRAM OPERATION.

(1) Each program shall maintain a system that enables all children in the program's care to receive a level of supervision that is appropriate to their age and their development, physical and mental status so as to ensure their health and safety and that allows program personnel to know the whereabouts of each child.

(a) This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the program for the day in order to ensure that no children have been unintentionally left in any part of the program's facilities or in any vehicles that the program uses to transport children.

(b) Children six (6) weeks of age through two (2) years of age: the adult must be able to hear the child at all times, must be able to see the child at a quick glance, and must be able to physically respond immediately.

(c) Children three (3) years through five (5) years of age shall be safely protected by an adult in close proximity and not distracted by other tasks and must be able to physically respond immediately.

(d) Children six (6) weeks of age to five (5) years of age during mealtime: An adult must be in the direct sight and sound of child/children while the child/children are eating.

(e) Children who are in kindergarten, five (5) years of age, through nine (9) years of age shall be protected by an adult who adjusts restrictions appropriately for different ages and abilities and must be able to physically respond immediately.

(f) Children ten (10) years of age through thirteen (13) years of age: The adult shall know the whereabouts and activities of the child/children at all times and must be able to physically respond immediately. Youth/children shall have the opportunity to develop independence.

(g) Children fourteen (14) years of age to eighteen (18) years of age: The adult shall know the whereabouts and activities of the children, provide age appropriate guidance and must be able to physically respond as needed.

(h) Mixed-age Groups. When children ages ten (10) and above are grouped with children under ten (10) years of age, the minimum supervision requirements must be in accordance with the supervision required for the age group of the youngest child in the group

(i) Staff shall position themselves strategically for adequate supervision and quick response.

(j) Staff shall be aware of the dynamics (interactions) and activities of the entire group even when dealing with only part of the group at a time.

(k) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(l) Teachers shall monitor children's toileting and be aware of their activities while respecting the privacy needs of the child. Programs must have a bathroom supervision plan to reflect the developmental needs of children in the classroom. Items in plan may include, but are not limited to, location of staff, times of bathroom breaks and locations, and emergency bathroom procedures.

(m) The program shall maintain a plan, approved by the Department, that enables a teacher in an emergency situation to call a second (2nd) adult who can respond quickly while maintaining as much supervision of the children in care as is possible under the circumstances.

(2) Each enrolled child shall be in a defined group based on their age and assigned to that group with a specific teacher

(a) Maximum group size requirements shall be maintained at all times when children are indoors with the exceptions of meals served in common dining rooms, napping in common nap rooms, or outdoors on the playground.

(b) When infants are cared for in a center with older children, they shall not be grouped with children older than thirty (30) months of age and a separate area shall be provided for them.

(c) In order to assure the continuity of care for children thirty (30) months of age to five (5) years of age and their teachers, the children shall be kept with the same group throughout the day and shall not be moved, shuffled, or promoted to a new group until required based upon the developmental needs of the child; provided however, that:

1. For children, groups, excluding infants and toddlers, may be combined for short periods for a special activity, e.g. special assembly, visiting performers, or community helpers, etc., of no more than thirty (30) minutes duration per day as long as adult: child ratios are met.

(3) Each program shall adhere to the maximum group size and adult: child ratios required by this chapter.

(a) The adult: child ratios shall be maintained by the program while the children are indoors and on the playground.

(b) The maximum group size and adult: child ratio shall be based on the standards set forth in this chapter.

(c) All children physically present in the program's facility or the program's assigned area within the facility shall be counted in the adult: child ratio and group size.

(d) Any number of children in excess of the adult: child ratio requires a second qualified adult teacher; provided, however, that the maximum group size shall not be exceeded.

(e) When more than twelve (12) children are present on the premises, but a second (2nd) adult is not required by the adult: child ratio rules contained in this Chapter, a second (2nd) adult shall be physically available on the premises.

(f) If meals are served, any person responsible for preparing meals and washing the dishes shall not be included in the adult: child ratio while preparing meals or washing dishes.

(4) Programs must meet the following group size and adult: child ratios:

(a) Maximum group size and adult: child ratio for single-age grouping:

Age	Group Size	Adult: Child Ratio
Infant (6wks-12m)	8	1: 4
Toddler (11m-23m)	12	1:6
Two (2) years old	14	1: 7
Three (3) years old	18	1: 9
Four (4) years old	20	1: 13
VPK, 619, PDG	20	1:10

(b) Maximum group size and adult: child ratio for multi-age grouping:

Age	Group Size	Adult: Child Ratio
Infant – 18 months	8	1: 4
18 – 36 months	16	1: 8
3-4 year olds only	20	1:10
3 – 6 years old*	24	1: 13

*Not including first grade children.

(c) For children six (6) weeks through two (2) years, class assignment shall be based on the developmental needs of the child.

~~(c)~~(d) For children age two (2) years and six (6) months on or before August 15th, if the director of schools finds through evaluation and testing, at the request of the parent or legal guardian, that a child is sufficiently mature, emotionally and academically, then the child may be permitted to enter a mixed-age three through six (3-6) year old classroom.

~~(d)~~(e) For children three (3) years through pre-kindergarten, class assignment shall be determined based on the child's age on August 15th. If the director of schools finds through evaluation at testing, at the request of the parent or legal guardian, that a child who has a birthdate from August 16th through September 30th is sufficiently mature, emotionally and academically, then the child may be permitted to enter the next classroom level.

~~(e)~~(f) Group sizes or class assignments and adult: child ratios may not be adjusted based on a change to a child's age during the school year. Schools shall not change a classroom status mid-year ~~. i.e.~~(e.g. from single-age to multi-age, due to a child's age).

~~(f) For children three (3) years through pre-kindergarten (excluding LEA pre-k to include VPK, IDEA 619, etc.) if the director of schools finds through evaluation and testing, at the request of the parent or legal guardian, that a child who has a birthdate from August 16-September 30 and is sufficiently mature emotionally and academically, then the child may be permitted to enter such classroom.~~

(~~g~~h) Maximum group size and adult: child ratio during arrival and departure (1 hour prior to and end of the school day) excluding infants and toddlers:

Age	Group Size	Adult: Child Ratio
Including 3 year olds	15	1: 10
Including 4 year olds	20	1: 12

(h) Maximum group size and adult: child ratio during before and after school programs for birth through five:

Age	Group	Adult: Child Ratio
Infant – 36 months	Ratio and Group size remains the same	
3-4 year olds	22	1:13
4-~~5~~ year olds – -kindergarten	24	1:16

(5) During naptime and nighttime care adult: child ratios may be relaxed so long as the children are adequately protected and all of the following requirements are met:

(a) At least one (1) adult shall be awake and supervising the children in each nap room or sleeping area;

(b) Infant/toddler ratios shall be maintained; and

(c) The adult: child ratio for children ages three (3) years and above can be fifty percent (50%) of the required ratio if there are enough adults on the premises so that the adult: child ratio required for children when they are awake shall be met immediately in an emergency.

(d) Maximum group size limits do not apply as long as the appropriate adult: child ratio is met at the fifty percent (50%) level.

(6) Each program shall have a written playground supervision plan that includes:

(a) Arrival and departure procedures;

(b) Supervision assignments of staff to assure that all areas of the playground can be seen so that all children can remain within sight of the teachers;

(c) Identification of which staff will merely supervise in their assigned zone while other staff, if any, interact with children as play facilitators;

(d) Emergency plans specific to a variety of circumstances, such as, child injury, weather evacuation, toileting and other personal care needs of children or staff, etc.; and

(e) A communication link among playground supervisors and a designated staff person, if available, inside the program's facility.

(7) Programs shall meet the following requirements for off-site activities and swimming:

(a) The required adult: child ratio for preschool children shall be doubled during off-site visits.

~~(a)~~(b) In order for parents or guardians to be included in the adult: child ratio for off-site activities, the school must have a TBI/FBI background check, child abuse check, and vulnerable person's registry check on file for the parent or guardian.

~~(b)~~(c) For children in kindergarten through thirteen (13) years of age the following requirements shall be met:

1. The number of trained teachers required to be present on off-site activities shall be at a minimum, equivalent to the number that would be required in the classroom; additional adults to meet the following off-site ratios in chart below may be teachers, volunteers and/or unpaid staff.

Number of children	Trained Teachers	Additional Adults	Total Adults Required
1 – 20	1	1	2
21 – 30	2	1	3
31 – 40	2	2	4
41 – 50	3	2	5

~~(c)~~(d) For children age fourteen (14) to eighteen (18), the number of trained teachers required to be present on off-site activities shall yield an adult: child ratio of 1:20, additional adults to meet this ratio may be teachers, volunteers and/or unpaid staff.

~~(d)~~(e) A minimum of two (2) adults is required for any off-site activity.

~~(e)~~(f) Programs shall maintain a system utilizing an off-site attendance roll which tracks the whereabouts of each child while off the premises.

~~(f)~~(g) The following requirements shall be met when children are swimming:

1. The following adult: child ratios shall be followed:

Age	Adult: Child Ratio

Infant	1: 1
Thirteen (13) – thirty-five (35) months	1: 2
Three (3) years old	1: 4
Four (4) years old	1: 6
Five (5) years old	1: 8
Kindergarten – thirteen (13) years	1: 10
Fourteen (14) – eighteen (18) years	1: 20

2. Group swimming for infants and toddlers is not recommended.

3. At least one (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person must supervise from above the level of the swimmers, preferably from an elevated lifeguard chair.

4. The lifeguard may not be included in the required adult: child ratio while performing lifeguard duties.

5. Remaining teachers should supervise both in and out of the water.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-302(l), 49-1-1101 through 49-1-1109, 49-5-413, 49-6-2101, 496-2105, 49-6-2107, 49-6-2108, 49-2-2110, 49-6-2114, 49-6-2116, 49-6-3001, 55-9-602 et. seq., 55-50-301 et seq., 37-1-403(a)(8), 55-50-401 et. seq. and 71-3-507(g) and (h).* ***Administrative History:*** *Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.07 STAFF.

(1) All programs shall be staffed with a director and enough teachers and staff to meet the required adult: child ratios.

~~(2)~~ Every staff person, including auxiliary staff, substitutes, volunteers, and practicum students, shall be physically, mentally, and emotionally capable of using the appropriate judgment for the care of children, and otherwise performing his/her duties satisfactorily. A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.

(2)

~~(3)~~

Every staff person, both paid and unpaid, shall be at least twenty-one (21) years of age in order to work in an early child care program.~~who is under the age of twenty-one (21) years must be supervised by an adult while in the presence of children. Exception: School-age bBefore and after school programs. Before and after school programs involving early childhood (birth-five years of age) do not meet the exception criteria.~~

~~(4)~~(3)

~~(5)~~(4) At least one (1) adult available on the premises at all times during program operating hours shall be able to read and write English.

~~(6)~~(5) Prior to assuming duties, each new employee shall receive two (2) hours of orientation, and be able to explain the program philosophy, emergency procedures, policies regarding discipline of children, policies regarding the reporting of child abuse, Sudden Infant Death Syndrome (SIDS), and policies for receiving and dismissing children.

~~(7)~~(6) Within the first two (2) weeks on the job and annually thereafter, each employee, including directors,

teachers, substitutes, volunteers, and practicum students, shall receive annual instruction in:

(a) Child abuse detection, reporting, and prevention;

(b) Parent-center communication;

(c) Disease control and health promotion;

(d) An overview of certificate of approval requirements;

(e) Information on risks of infection to female employees of childbearing age;

(f) Food allergies;

(g) Supervision during high risk activities such as eating and outdoor play;

(h) Meal service and safe food preparation policies;

(i) Shaken baby syndrome;

(j) Abusive head trauma;

(k) Safe sleep procedures; ~~and~~

(l) Developmentally appropriate practices; and~~.~~

~~(l)~~(m) Policies regarding discipline and supervision of children.

~~(8)~~(7) All training shall be documented in the program's records and be available for review by the Department's staff at any time.

~~(9)~~(8) The program must maintain written documentation that each employee has read the full set of all applicable rules. In addition, a copy of these rules shall be maintained in an area that is readily accessible to all staff.

~~(10)~~(9) Each program location where children are present shall have an on-site director. The on-site director, with the guidance of the board or owner of the program, shall be responsible for staff and the day-to-day operation of the program. On-site directors shall meet the following criteria:

(a) The on-site director of a program shall be a full-time employee and shall be physically present in the program's facilities daily at least half of the total hours of operation.

~~(a)~~(b) A director shall be at least twenty-one (21) years of age if hired after June 30, 2017 and shall meet at least one (1) of the minimum qualifications listed below:

Education level	Minimum experience required
Graduation from an accredited four-year (4 year) college.	One (1) year of full-time experience in a group setting. Experience may be paid or unpaid. (2 years school-age care experience = 1 year full-time experience)

Sixty (60) semester hours of college training, with at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or related field.	Two (2) years of full-time experience in a group setting. Experience may be paid or unpaid. (2 years school-age care experience = 1 year full-time experience)
High school diploma (or equivalent), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training, or the equivalent as recognized by the Department.	Four (4) years of full-time experience in a group setting. Experience may be paid or unpaid. (2 years school-age care experience = 1 year full-time experience)
Has been continuously employed as an on-site program director or child care agency owner since July 1, 2000.	Not applicable.

~~(b)~~(c) Within the first thirty (30) days of employment by a program, a director shall complete an orientation provided by the Department of Education.

~~(c)~~(d) ~~In the 2017-18 school year, directors shall complete at least twenty-four (24) hours of professional development. In the 2018-19 school year and beyond,~~ Ddirectors shall complete at least thirty (30) hours of professional development of which six (6) hours shall be in administration, management or supervisory training and six (6) hours shall be in developmentally appropriate literacy practices.

~~(1) Six hours of the professional development shall be in administration, management or supervisory training and six (6) hours shall be in developmentally appropriate literacy practices.~~

~~(d)~~(e) If a director serves a dual role (e.g. an individual serving as the director and a teacher), the duties of each role shall be performed separately and not simultaneously.

~~(11)~~(10) Programs may employee an on-site assistant director. An assistant director or other staff member shall be designated to be in charge in the absence of the director and all staff shall be notified of this designation. On-site assistant directors shall meet the following criteria:

(a) The on-site assistant director shall be at least twenty-one (21) years of age if hired after June 30, 2017 and shall have at least two (2) years of college training or a Department recognized credential and one (1) year of full-time or two (2) years of part time school-age care documented work experience (paid or un-paid) in a group setting; or

(b) The on-site assistant director shall be at least twenty-one (21) years of age and shall have earned a high school diploma or equivalent educational credential recognized by the Department and two (2) years of full-time or four (4) years of part time school-age care documented work experience (paid or unpaid) in a group setting.

(c) Within the first thirty (30) days of employment, assistant directors shall complete an orientation provided by the department of education child care program evaluator.

(d) ~~In the 2017-18 school year, assistant directors shall complete at least twenty-four (24) hours of professional development. In the 2018-19 school year and beyond~~A, assistant directors shall complete at least thirty (30) hours of professional development of which six (6) hours shall be in developmentally appropriate literacy practices and three (3) hours shall be in administration, management or supervisory training.

~~(1) Six hours of the professional development shall be in developmentally appropriate literacy practices.~~

~~(2) Three hours of the professional development shall be in administration, management or supervisory training.~~

~~(12)~~(11) All teachers and assistant teachers shall be at least twenty-one (21) years of age if hired after June 30, 2017 and shall meet the following criteria:

(a) ~~Within the first thirty (30) days of employment~~Before assuming teaching duties, teachers and assistant teachers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department. Pending completion of the orientation training, the teacher's employment status with the program is conditional. Up to two (2) hours of training credit may be earned for Child and Adult Care Food Program (CACFP) training or USDA Free and Reduced Price Meal Program training.

(b) Full-time~~In the 2017-18 school year, teachers and assistant teachers shall complete at least twenty- four (24) hours of professional development. In the 2018-19 school year and beyond,~~ teachers and assistant teachers shall complete at least thirty (30) hours of professional development.

(c) At least six (6) hours of the required professional development shall be obtained outside of the program. At least six (6) hours of the professional development shall be in developmentally appropriate literacy practices.

(d) Teachers shall be evaluated for knowledge and understanding of growth and development patterns of children and understanding of appropriate activities for children as well as those with special needs.

(12) Part-time teachers and teaching assistants shall meet the following criteria:

(a) Prior to assuming duties, part-time teachers and assistant teachers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department.

(b) Part-time teachers and assistant teachers shall complete at least fifteen (15) hours of professional development, of which three (3) shall be [illegible] development [illegible] propriate literacy practices and three (3) shall be obtained outside of the program.

(c) Part-time teachers shall be evaluated for knowledge and understanding of growth and development patterns of children and understanding of appropriate activities for children as well as those with special needs.

(13) Substitute teachers shall meet the following criteria:

(a) Substitutes shall comply with the same orientation requirements defined by these rules for all program staff and shall be provided a classroom orientation prior to assuming duties~~.~~

(b) Substitutes who have acted as teachers for two hundred (200) or more hours in the previous calendar year shall meet the training requirements contained in the rules for part-time teachers.

(c) Auxiliary staff may be used as emergency substitutes if their qualifications permit, but not while performing auxiliary duties.

(d) Substitutes shall meet the criminal background check requirements and the same requirements as regular staff for the physical examination required by this Chapter.

(e) Practicum Students. Persons serving temporarily as teachers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this paragraph.

(14) A volunteer is a person who provides services for a child care center without payment and who is

used to supplement the regular staff or substitutes. Volunteers shall not be included in the adult: child ratios. The on-site director shall be responsible for and supervise the activities of volunteers to assure the safety of children.

(15) All child care programs shall require any person employed in a position requiring proximity to children to:

(a) Provide evidence of the following:

1. Department of Health Vulnerable Persons Abuse Registry check;

2. TBI/FBI Fingerprint and Background check;

3. TBI/FBI Sex Offender Registry; and

(b) This evidence shall be obtained by the program prior to employment.

(c) The program shall immediately review the report of the background check received from the Tennessee Bureau of Investigation, and shall immediately consult with the Department to resolve any questions relative to the person's status. Upon determination that the person's status prohibits the person from having access to children as described in this Chapter, the program shall immediately exclude such person from access to children. Failure to exclude the person under this part will result in immediate suspension of the program's certificate of approval.

(d) A new fingerprint sample must be obtained, for all employees, every five (5) years.

(16) No individual with a prohibited criminal history as defined below may work, substitute or volunteer in a program, be an owner, director or manager of a program who has access to children, have significant contact with children or otherwise have unrestricted access to children in any manner whatsoever. An individual shall be immediately and automatically excluded from a program or any contact whatsoever with children if the individual's criminal history includes:

(a) A criminal conviction or a no-contest or guilty plea; or any pending criminal action, including individuals subject to any warrant, indictment or presentment, etc.; or placement in a pretrial diversion; or

(b) A pending juvenile action or previous juvenile adjudication, which, if an adult, would constitute a criminal offense; and

(c) Any of the circumstances in (a) or (b) above involves any of the following criminal offenses:

1. Any offense (including a lesser included offense) involving the physical, sexual or emotional abuse or gross neglect of a child or involving a threat to the health, safety or welfare of a child;

2. Any offense (including a lesser included offense) involving violence, or the threat of violence against another person; and/or

3. Any offense (including a lesser included offense) involving, the manufacture, sale, distribution or possession of any drug.

(17) An individual shall also be immediately and automatically excluded from the program or from access in any manner whatsoever to the children in the care of the program, if the individual:

(a) Reveals a prohibited or potentially prohibited criminal history on the criminal history disclosure form;

(b) Is listed on the Department of Health's Vulnerable Persons Abuse Registry; or

(c) Is known to the program as a perpetrator of child abuse or child sexual abuse or to have a prohibited criminal record, who is identified to the program's management by the Department of Children's Services as a validated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; or, who at any time is identified by any person or entity to the program's management and is confirmed by the Department as having a prohibited criminal history.

(18) An individual with a prohibited history as set forth below shall be immediately and automatically excluded from providing driving duties on behalf of the program if the individual:

(a) Has a pending criminal action (including warrants, indictments, presentments, etc.) is completing pretrial diversion, or has been convicted of or pled guilty to any offense involving the use of a motor vehicle while under the influence of any intoxicant, which constitutes a violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401; or

(b) Has been convicted of or pled guilty to any felony involving use of a motor vehicle while under the influence of any intoxicant. In such case, the individual shall not be employed or otherwise serve as a driver for a program for a period of five (5) years from the date of the conviction or guilty plea.

(19) An individual who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by the Department of Children's Services, or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty as stated above, shall be supervised by another adult while providing care for children.

(20) Any person who is excluded or whose certificate of approval or operator status is denied based upon the results of the criminal history background review or based upon any other determination may request in writing to the Department within ten (10) calendar days of receiving notice of such exclusion or denial, a waiver from these automatic exclusion requirements.

(a) Requests for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.

(b) Requests for waivers shall be heard by an advisory committee, composed, at a minimum, of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers issued a certificate of approval by the Department and reviewed by the Department.

(c) Any person who is excluded from providing care or services to children under any provisions of this subchapter shall remain excluded pending the outcome of any exemption review and appeals.

(21) The Department may, at any time, request that the criminal background status or the Department of Health's Vulnerable Persons Abuse Registry of any individuals having access to children under any of the circumstances set forth in this subchapter be reviewed using the processes described above.

(22) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing program owners or operators, substitutes or volunteers of a program for whom a criminal background check was conducted after issuance of a certificate of approval or after employment or assuming duties as a volunteer or substitute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchapter, shall be governed by the provisions of this Chapter.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-302(l), 49-1-1101 through 49-1-1109, 49-2-203, 49-5-413, 496-300, 49-10-608 and 71-3-507 (g) & (h).* ***Administrative History:*** *Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.09 PROGRAM REQUIREMENTS.

(1) Educational activities shall be based on developmentally appropriate educational practices.

(a) Infant/Toddler classrooms ages six (6) weeks-twenty-four (24) months must show evidence that children are provided the opportunity to: (See TNELDS standards for Birth-48 months)

1. Sit and listen to teacher read aloud to him/her individually and in a group daily;

2. Engage in interactive play that includes activities such as movement, dance, musical games, and pretend play that encourages the use of both large and small muscles;

~~2.~~3. Engage in meaningful conversations with teachers;

~~3.~~4. Engage in touching, feeling, and identify a variety of known and unknown objects;

~~4.~~5. Explore a variety of culturally diverse books that encourage early literacy skill development and increase children's knowledge about the world around them. These books should represent different genres, i.e. poetry, nonfiction, fiction, informational texts, etc.; and

~~5.~~6. Experience daily tummy time.

(b) Preschool/Pre-K classrooms ages twenty-four (24) months to five (5) years must show evidence that children are provided the opportunity to: (See TNELDS standards for 48 months to kindergarten)

1. Sit and listen to teacher read aloud to him/her individually and in group daily;

2. Engage in pretend play;

3. Engage with developmentally appropriate educational and open-ended materials, i.e. blocks, clay, sand;

4. Engage in meaningful conversations with peers and teachers;

5. Write, create books, and engage with~~in~~ print rich materials;

6. Engage with a variety of culturally diverse books and materials that encourage early literacy skills in concepts about print, genres, letter identification, beginning sounds, etc.;

7. Engage in a variety of activities that support number sense, mathematical thinking, and understanding; and

8. Help with daily classroom and self-care routines.

(c) Children~~,~~ enrolled in any LEA pre-kindergarten program~~,~~ must participate in an educational curriculum that is aligned with the Tennessee early learning developmental standards.

(d) Staff shall plan ahead for developmentally appropriate activities and written lesson plans shall be provided for children of each age group.

(e) There shall be a balance between child's choice and adult-directed activities.

(f) A daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities such as art, music, literature, dramatic play, science, and health

(2) Non-educational program activities shall be stimulating and developmentally appropriate.

(a) Any technology children engage in shall be developmentally appropriate, previewed by staff for content, approved by parents, and shall not exceed two (2) hours per day.

(b) There shall be alternating periods of vigorous activity and rest throughout the day.

(c) Children shall not be left in restraining devices such as swings, car seats, or high chairs (in excess of thirty (30) minutes). Stimulation shall be provided to children in those settings.

(d) Opportunities shall be provided for children to interact with one another.

(e) Opportunities shall be provided for children to be by themselves to play alone or do homework, if they choose, in a small quiet area away from other activities.

(f) Youth ten (10) years and older shall be encouraged to participate in the planning of their schedules and activities.

(g) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.

(h) For infants and toddlers, a portion of the day shall include floor time for activities that develop physical, social, language and cognitive skills.

(i) Infants and toddlers shall have language experiences with adults on a daily basis.

(3) For ages three (3) through school-age, the program curriculum shall include instruction in personal safety.

(a) The personal safety curriculum shall include a Department-recognized component on the prevention of child abuse, based upon Department curriculum guidelines. The program may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of child abuse.

(b) The personal safety curriculum used by the program shall be made available to the parents and legal guardians for review.

(c) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.

(d) If parents/legal guardians have questions regarding the personal safety component of the curriculum, a representative of the program shall meet with the parent/legal guardian to discuss the personal safety component of the curriculum.

(e) For school-age children, the personal safety curriculum is integrated in the Health and Wellness curriculum during the school day for K-12 students. The school-age children enrolled in the program shall be provided information on reporting physical, verbal or sexual abuse to the students.

(f) Children, enrolled in a school-administered pre-kindergarten program, shall participate in an educational curriculum, aligned with the Tennessee Early Learning Developmental Standards as required by T.C.A. § 49-6-104(b)(5).

(4) An opportunity for outdoor play shall be extended to children of all ages who are in care more than three (3) daylight hours; provided, however, for programs where outdoor play is prohibitive or dangerous, as determined at the discretion of the Department, unoccupied indoor space providing fifty (50) square feet per child is acceptable.

(a) Children shall be provided an opportunity for outdoor play when the temperature range is between thirty-two (32) degrees and ninety-five (95) degrees Fahrenheit and not raining.

(b) Teachers shall be alert for signs of dehydration, heat stroke, frostbite, etc., dependent upon the season.

(c) Each agency shall develop a set of age appropriate playground rules that uses positive language. Rules shall be posted in each play area.

(5) Programs shall meet the following behavior management criteria:

(a) Discipline shall be reasonable, appropriate, and in terms the children can understand.

(b) Discipline that is shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.

(c) Discipline shall not be related to food, rest, or toileting.

(d) Spanking or any other type of corporal punishment is prohibited.

(e) Praise and encouragement of good behavior shall be used.

(f) Time out shall be reasonable and developmentally appropriate.

1. Time out shall take place in an appropriate location based upon the development of the child.

2. The length of each time out session shall be based on the age of the child and shall not exceed one (1) minute per each year of age of the child; provided, however, that in no event shall any child below the age of thirty-six (36) months be placed in time-out for more than three (3) minutes, and no child between thirty-six (36) months and sixty (60) months of age shall be place in time-out for longer than five (5) minutes.

(6) Toilet training shall never be started until a child has been in the program long enough to feel comfortable and is able to communicate their need to use the bathroom. Children shall not be made to sit on the toilet for more than five (5) minutes.

(7) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances (e.g., acute illness of or injury to parents, severe weather conditions, natural disaster, and unusual work hours). In such cases every effort shall be made to minimize the amount of time spent in the program by exploring and documenting alternatives (i.e., part time care, care with a relative, etc.) Individualized plans for the care of a child in excess of twelve (12) hours due to special circumstances shall be signed by the parent and the director/ administrator

and must be approved by the Department. Plans shall be updated annually.

(8) When more than twelve (12) school-age children in first (1st) grade and above are present, a separate group, a separate space, and a separate program type shall be provided for them.

(9) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.

Authority: *T.C.A. §§ 4-5-201 et seq., 37-1-403, 37-1-601, 37-1-603, 49-1-302 (l), 49-1-1101 through 491 1109 and 49-6-104.* ***Administrative History:*** *Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.10 HEALTH AND SAFETY.

(1) Current and comprehensive first aid information shall be available to all staff who interact with children. A standard first aid kit (for example, one approved by the American Red Cross) shall be available to all staff, and all staff shall be familiar with its contents and use. Each program shall provide periodic training and updates on basic first aid and the use of the first aid kit.

(2) At least one staff member who has current certification in first aid from a certifying organization recognized by the Department shall be on duty at all times. The first aid certification course shall be a minimum of three (3) hours and shall be taught by a certified first aid instructor.

(3) At least one (1) staff member on duty shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department

(a) The initial CPR course shall be a minimum of four (4) hours and shall be taught by an individual currently certified, as recognized by the Department, to provide CPR instruction.

(b) When school-age children are present, and/or in a school-age only program, at least one (1) staff member shall hold current certification in adult CPR.

(4) Each program, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, etc. and shall inform parents of the plan.

(a) The program shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one year. Extended Care: At least one (1) of these drills shall be conducted during extended care hours.

(5) Smoking is not permitted on the premises of a child care program.

(6) The consumption or possession of alcohol is not permitted on the premises of a child care program.

(7) Firearms shall not be on the premises of a child care program, or in any vehicle used to transport children or in the presence of a child.

(8) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.

(9) Staff's personal belongings (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.

(10) The following emergency telephone numbers shall be posted next to all telephones and be readily available to any staff member:

(a) Fire department;

(b) Police department/sheriff;

(c) Nearest hospital emergency room;

(d) Child abuse hotline;

(e) Local emergency management agency;

(f) Ambulance or rescue squad;

(g) Poison control center;

(h) 911 or a similar generic number operated in the community; and

(i) Contact numbers for parents.

(11) Programs shall comply with the following rules for the health of children:

(a) All children shall be checked upon arrival and observed for signs of communicable disease during the day.

(b) A child's temperature should be taken using a non-invasive method unless otherwise prescribed by a physician. Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved.

(c) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission of the child to the center.

(d) Children diagnosed with scabies or lice shall have proof of treatment prior to readmission.

(e) The program may not provide care and/or isolation for a child with contagious condition unless written instructions are obtained from a licensed physician or certified health care provider.

(f) All children born in countries other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan shall present evidence of a tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.

(g) Staff shall make every reasonable attempt to notify parents immediately when a child shows signs of serious illness, including but not limited to, high temperature, disorientation, coughing, vomiting or diarrhea with blood present, severe difficulty breathing, seizure, etc. to arrange for emergency treatment.

(h) In no event shall the program delay seeking emergency treatment due to a delay in making contact with the parent.

(i) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the program:

1. Hepatitis A;

2. Food borne outbreaks ~~(food poisoning);~~

3. Salmonella;

4. Shigella;

5. Measles, mumps, and/or rubella;

6. Pertussis;

7. Polio;

8. ~~Haemophilus influenza type B~~Influenza type A or B;

9. Meningococcal meningitis;

~~10. Chicken Pox;~~

~~11.~~10. ~~Hand, foot and mouth disease (HFMD);~~ Staphylococcus aureus; and

~~12.~~11. Any other illness identified by the state or local Department of Health.

(j) The program shall report the occurrence of any of the above diseases to the local health department as soon as possible, but no later than the end of the day in which it occurred.

(12) Program staff shall make every reasonable attempt to notify parents immediately when a child sustains serious injury/injuries, including but not limited to, massive bleeding, broken bones, head injuries, possible internal injury, etc., to arrange for emergency treatment.

(13) Tuberculosis (TB) screening prior to on-going contact with children is recommended for any individual who:

(a) Was born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan;

(b) Has a weakened immune system (Human Immunodeficiency Virus (HIV), cancer, taking chemotherapy drugs, etc.); or

(c) Has been recently exposed to tuberculosis.

(14) The administration of medication shall be in compliance with the following:

(a) All medications, prescription and non-prescription shall be received from the parent by a designated staff person or management level staff person. An alternate staff person shall be available to administer medication in the event the designated staff person is absent.

(b) The designated staff person shall document verification of the following:

1. The parent's written authorization to administer medication and instructions on the methods of administration;

2. That medicines or drugs are in the original prescription container, are not out of date, and labeled with the child's name; and

3. The specific dosage and times medication is to be administered to the child.

(c) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent:

1. Times medications administered;

2. Noticeable side effects; and

3. Name of staff person administering medication to child.

(d) The parent of a child receiving medication shall sign documentation verifying the receipt of documentation of administration required by subparagraph (c) above and that all unused medication was returned to the parent.

(e) Medication shall not be handled by children. Exception: ~~school-age~~ Children with a physician's authorization for the self-administration of a medication. Assistance to school-age children self-administering medication must be in accordance with Guidelines for Use of Health Care Professionals and Health Care Procedures in a School Setting.

(f) Medication shall never be administered in bottles or infant feeders unless authorized by a physician.

(g) All medicines, prescription and non-prescription shall be stored in a locked compartment or container.

1. If medicine requiring refrigeration is kept in a refrigerator the medicine shall be put in a leak-proof locked container.

2. Keys for these compartments shall be inaccessible to children.

~~2.~~3. Medication requiring emergency administration, as directed by the physician, nurse practitioner or physician's assistant, e.g., "EpiPen," asthma inhaler, etc., may be kept in an unlocked container that is inaccessible to children.

(h) Public school-administered programs shall follow the procedures for student medications defined in the School Health policy, adopted by the Local Education Agency.

(15) The following safe sleep practices shall be followed:

(a) Infants shall be positioned on their backs when placed in a crib for sleeping.

(b) A crib shall only have a tight fitting sheet; soft bedding for infants is prohibited.

(c) Infants shall not be wrapped tightly or swaddled in blankets for sleeping.

(d) Infants should be dressed lightly for sleep and the room temperature shall be in a range that is comfortable for a lightly clothed adult. Infants may be clothed in sleep sacks that have been approved by the Consumer Product Safety Commission and the Tennessee Department of Health as long as the sleep sack is not handmade, not on the recall list, and children are able to move their arms freely while wearing the sleep sack.

(e) Infants that fall asleep during tummy time shall be placed in their crib immediately.

(f) Infants shall be touched by a teacher every fifteen (15) minutes in order to check breathing and body temperature.

(g) Pillows and blankets shall be prohibited for infants.

(h) If a child appears not to be breathing, the program must immediately begin CPR and call for emergency medical assistance.

~~(h)~~(i) Before any teacher can assume duties of any type in an infant room they must be oriented in the foregoing SIDS procedures.

~~(i)~~(j) The areas where infants sleep shall have adequate lighting which allows the teacher to quickly, at a glance, verify that the child's head is uncovered, that the child is breathing, and otherwise visually verify the child's condition.

(16) For the protection of children and adults, the Centers for Disease Control guidelines for hand washing and diapering procedures shall be followed. Hand Sanitizer shall not be a substitute for soap and water and shall be kept out of reach of children.

(17) Diapering shall comply with the following:

(a) Children shall be diapered/changed and cleaned immediately when wet or soiled.

(b) The diapering area and/or toilet training area shall be located near a hand washing lavatory and shall be located in a separate area from the food preparation/service area.

(c) All diapering surfaces must be off the floor, nonporous and shall be sanitized using solutions for general cleaning and sanitizing purposes, i.e.:

1. For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one (1) tablespoon bleach to one (1) quart of water) shall be made daily.

2. Substitutions for the bleach solution required in part 1 above that are approved for the child care setting by the Department of Health are permissible.

3. The solution required in part 1 above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths, and the Health Department does not permit the use of higher concentrations than these in food preparation areas. Specific jurisdictions may have even more stringent requirements, therefore, the local health department should be consulted.

(d) A tightly covered container with plastic liner shall be used for diaper disposal and shall be inaccessible to children. This container shall be emptied by closing the liner and disposing of it in an outside receptacle.

(18) Program equipment shall meet the following safety requirements:

(a) Manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.

(b) All indoor and outdoor equipment shall be well made and safe. There shall be no dangerous angles, sharp edges, splinters, nails sticking out, open S-hooks or pinch points within children's reach.

(c) Electrical cords on equipment for children shall be inaccessible to the children.

(d) Damaged equipment shall be repaired or removed from the room or playground immediately.

(e) Equipment shall be kept clean by washing frequently with soap and water.

(f) There shall be developmentally-appropriate equipment and furnishings for each age group in attendance.

(g) Individual lockers, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for the belongings of each child, ages infant - preschool.

(h) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.

(i) A place shall be provided for each school-age child's belongings.

(j) There shall be equipment for napping or sleeping for each preschool child who is in care for six (6) hours or more.

1. A quiet rest area and cots or mats shall be available for children who want to rest or nap. However, no child shall be forced to nap.

2. No child shall be forced to stay on a cot or on a mat for an extended period of time.

3. In order to avoid the spread of airborne diseases, children shall be positioned on mats in a face-to-feet alternating pattern.

4. Spacing of cots, cribs, and mats shall allow sufficient space to walk between them.

5. All nap/sleep equipment shall be in good condition and comply with the following requirements:

(i) Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months to five (5) years.

(ii) Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.

(iii) Each child under twelve (12) months shall have an individual, free-standing, crib at least twenty-two inches (22") x thirty-six inches (36") with an open top.

(iv) Mattresses and foam pads shall be covered with safe, waterproof material.

(v) A clean sheet or towel shall be used to cover whatever the child sleeps on.

(vi) A clean coverlet shall be available to each child.

(vii) Soiled sheets and coverlets shall be replaced immediately.

(viii) Each crib, cot, bed or mat shall be labeled to assure that each child naps on his own bedding.

6. Crib mattress shall not be positioned directly on the floor for napping. Pack 'n plays may be used for naptime.

(19) Every operator, owner, director, teacher, or staff member of, or substitute staff member or volunteer in a program is individually responsible, and is required by T.C.A. §§ 37-1-403 and 37-1-605, to immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services, local law enforcement or the judge of the juvenile court in the county of the child's residence.

(a) All agency staff, including non-caregiving staff, shall receive annual training regarding the procedures to report child abuse and neglect.

(b) In determining a reasonable suspicion for purposes of reporting, the program shall limit questioning of the child and may make only the most basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists.

(c) The program shall not attempt to validate the allegation prior to making a report. A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and/or by law enforcement upon the report by the program's staff.

(d) Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse or /neglect observed on a child shall be immediately reported by staff to the Department of Children's Services in a manner specified by that department, to local law enforcement or to the judge of the juvenile court in the county of the child's residence.

(e) The following procedures for reporting suspected child abuse or neglect are prohibited:

1. The program shall not develop or implement policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse or neglect of a child as required by this Chapter and T.C.A. § 37-1-403 and 605, and shall not otherwise directly or indirectly require staff to report to the program management or seek the approval of program management prior to any individual staff member reporting the suspected abuse or neglect.

2. A report of suspected child abuse or neglect of a child enrolled in the program by the operator, owner, director, teacher or staff member of, or substitute staff member or volunteer in a program shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting requirements to the persons or entities specifically listed in this Chapter.

3. The operator, owner, director, teacher, or staff member of, or substitute staff member or volunteer in the program shall not suggest to advise or direct a parent or caretaker of a child enrolled in the program to make a report of suspected child abuse or neglect regarding that parent's or caretaker's own child who is enrolled in the program as a means of fulfilling the duty of the operator, owner, director, teacher or staff member of, or substitute staff member or volunteer in, the program to report child abuse or neglect as required by T.C.A. §§ 37-1-403 and 37-1-05.

4. Any action that does not comply in all respects with these rules, will not fulfill the statutory duty to report child abuse or neglect and the certification of approval requirements of this Chapter.

(f) Failure to make the reports required by this Chapter or the use of the prohibited methods as an attempt to fulfill the duty to report suspected child abuse or neglect, for children in the care of the program are, by themselves, grounds for suspension, denial or revocation of the program's certificate of approval.

(g) If the facts established by a preponderance of the evidence indicate that there has not been strict compliance with the requirements of this Chapter or that the prohibited procedures been utilized as an alternative means of fulfilling the requirements, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Advisory Council Review Board that the duty to report child abuse or neglect has not been fulfilled, and this ground for suspension, denial, or revocation of the program's certificate

of approval by the Department of Education shall be sustained unless such presumption is rebutted by a preponderance of the evidence.

(h) Every operator, owner, director, teacher or staff member of, or substitute staff member or volunteer in a program certified as approved by the Department of Education shall fully cooperate with all agencies involved in the investigation of child abuse or neglect.

1. The program shall provide access to records of children and staff.

2. The program shall allow appropriate investigators to interview children and staff.

3. The program shall not interfere with a child abuse and neglect investigation.

4. The program shall protect the child by requesting the investigator's identification.

5. The program shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Education.

(i) Upon notification of a pending abuse or/ neglect investigation of any program staff member the program shall enter into a safety plan with the Department regarding the individual's access to the program and the children in the care of the program.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-302(l), 49-1-1101 through 49-1-1109, 49-5-415, 49-6-5001 and 5002, 37-1-113, 37-1-401 et seq., 37-1-601 et seq. and 20 U.S.C. § 6081.* ***Administrative History:*** *Original rule filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010. Amendment filed June 18, 2013; effective November 28, 2013. T.C.A. §§ 4-5-201 et seq., 49-1-201(c)(24), 49-1-302(l), 49-1-1101 through 49-1-1109, 49-2203(b)(11), and Executive Order No. 24 (November 11, 1988). Administrative History: Original rule filed September 26, 1990; effective December 29, 1990. Amendment filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.11 FOOD.

(1) If the program provides meals, the program shall provide developmentally appropriate meals, snacks, and drinks for each child that are of sufficient proportions and nutritional value to meet each child's health needs in accordance with the following minimum requirements:

(a) For children in the agency at least four (4) hours, one (1) snack shall be provided, unless the four (4) hour period covers a normal meal hour, in which case a meal shall be served. However, if the child is fed their meal at home or in school, the child shall be served two (2) snacks in lieu of a meal.

(b) Children in care five (5) to six (6) hours shall be provided one (1) meal and one (1) or two (2) snacks. However, if the child is fed their meal at home or in school, the child shall be served two (2) snacks in lieu of a meal.

(c) Children in care seven (7) to ten (10) hours shall be provided one (1) meal and one (1) or two (2) snacks.

(d) Children in care for longer than ten (10) hours shall be provided two (2) complete meals and one (1) or two (2) snacks.

(e) A meal shall be provided to children who arrive before 7:00 a.m. and who have not had breakfast at home.

(f) Foods high in sugar and/or fat content but containing low nutritional value, shall not be served.

(g) All special needs diets shall be prepared as prescribed by a physician or by the written instructions of the parent.

(h) In order for parents to be aware of the food their children are receiving, the week's menus shall be planned and posted by the first day of each week and remain posted throughout the week. These menus shall be followed, although reasonable substitutions are permissible, if the substituted food contains the same nutrients. Any change shall be documented in advance of the meal.

(i) Food shall not be forced on or withheld from children.

(j) Programs must establish a feeding schedule for infants.

(k) Bottled breast milk, infant bottles, and formula shall not be heated in a microwave.

(l) Infants must be held while bottle feeding.

(m) Children shall not be permitted to carry a bottle with them throughout the day.

(2) The following rules shall be followed for meal service:

(a) Teachers and children shall wash their hands with soap and water.

(b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized prior to and after snacks and meals.

(c) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.

(d) Solid foods (including cereal) shall not be given in bottles or with infant feeders to children with normal eating abilities unless authorized by a physician. Violation of this rule may result in suspension, revocation or denial of the agency's ability under its certificate of approval to provide infant care.

(e) To avoid choking, foods shall be appropriately sized for the eating and chewing abilities of children.

(f) At mealtime, children shall be seated at appropriately sized tables and chairs, and adults shall supervise them.

(3) The following guidelines shall be followed for formula and food brought from home:

(a) All formulas and food brought from home shall be labeled with the child's name.

(b) Milk shall be placed immediately in the refrigerator.

(c) Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator.

(d) For optimum digestion, formula is to be served at body temperature.

(e) Frozen breast milk shall be dated when expressed.

(f) All formulas remaining in bottles after feeding shall be discarded.

(g) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the teacher, the jar shall be used for only one feeding.

(4) Microwaves, bottle warmers, and crock pots shall be only used by adults and shall not be accessible to children. All devices shall be used on the lowest setting. Children shall not be held while removing a bottle from crock pot or warming device.

(5) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table.

(6) Children shall always be restrained in the high chair manufacturer's restraint device while sitting in a high chair. Children who are too small or are too large to be restrained using the manufacturer's restraint device shall not be placed in a high chair.

(7) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon.

(8) Children shall never be left without adult supervision while eating.

(9) The following rules for food storage shall be followed:

(a) Potentially hazardous foods requiring cold storage shall be maintained at forty-five (45) degrees Fahrenheit (F) or below, and accurate thermometers for measurement of the food temperature shall be kept in the refrigerators where such food is stored.

(b) Potentially hazardous food requiring hot storage shall be maintained at an internal temperature of one-hundred forty (140) degrees F or above.

(c) Frozen foods shall be maintained at a temperature of zero (0) degrees F or below.

(d) Thermometers shall be placed in all freezers and all other cold storage equipment.

(e) All dry food supplies shall be stored in closed containers. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area. Containers of food shall be stored at a minimum of six (6) inches above the floor or on movable dollies.

(f) All food shall be protected from contamination during storage, preparation, transportation, and serving.

(g) No poisonous or toxic materials except those required for sanitization purposes may be used or stored in a food-service area of a facility.

(10) The following rules for food sanitation shall be followed:

(a) Raw fruits and vegetables shall be washed before use.

(b) Utensils shall be thoroughly cleaned and sanitized after each use. Single-service utensils shall be made from non-toxic materials and shall be discarded following use.

(c) Milk and food shall not be placed on the table longer than fifteen (15) minutes prior to the beginning of the meal to avoid contamination and spoilage.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-302(l), and 49-1-1101 through 49-1-1109.* ***Administrative History:*** *Original rule filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.12 PHYSICAL FACILITIES.

(1) Physical facilities shall maintain compliance with all applicable health and safety codes throughout the certification year and shall additionally comply with any updated standards issued by the Fire Marshal and the Department of Health.

~~(1)~~(2) All facilities shall have a means of communications via phone.

~~(2)~~(3) The maximum number of children who may be present inside a physical space (e.g., the program's "certificated capacity") shall be determined in accordance with the minimum square footages set forth in this paragraph; provided, however, the Department may, in its discretion as determined reasonably necessary to maintain the health and safety of the children in care, restrict the program's certificated capacity below the maximum which is set forth in these rules.

(a) A minimum of thirty (30) square feet of usable indoor space shall be provided for each child.

(b) Career and technical child care classes shall have separate space for the group of young children, with thirty (30) square feet per child of usable space, apart from the classroom space for students.

(c) For the purposes of calculating square footage requirements:

1. Usable space to be included in the square footage calculation includes:

(i) Book shelves used in centers or reading nooks;

(ii) Children's tables (centers, sand and water, etc.);

(iii) Shelving used to house toys, blocks, manipulatives, etc.; and

(iv) Other items that are used to enhance a child's learning space.

2. Non-usable space that shall not be included in the square footage calculation includes:

(i) Teacher's desk;

(ii) Teacher's file cabinet;

(iii) Cubbies;

(iv) Cot or mat racks;

(v) Diapering tables;

(vi) Cribs;

(vii) Restrooms;

(viii) Halls;

(ix) Kitchen; and

(x) Office space.

~~(c) , any area used as restrooms, halls, kitchen, or office space, and any space used by cribs or large pieces of furniture, shall not be considered "usable play space" and shall not be counted toward the program's certificated space.~~

(d) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided and used for more than one (1) group; provided, however, that each area is adequately equipped and arranged and that each group shall have the security of a stable classroom space.

~~(3)~~(4) All indoor areas shall be clean and safe.

(a) The indoor play/care areas shall be free of hazardous items that could be accessible to children.

(b) Indoor play equipment shall meet the following guidelines:

1. Pieces of equipment, such as television sets, bookcases, and appliances, shall be secured or supported so that they will not fall or tip over.

2. Sufficient indoor equipment, materials, and toys shall be available to meet active and quiet play needs of all children enrolled and to provide a variety of developmentally appropriate activities so that each child has at least three (3) choices during play time.

3. Toys, educational and play materials, shall be organized and displayed within children's reach so that they can select and return items independently.

4. Toys or teaching aids that are small or that have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.

~~(4)~~(5) Outdoor play areas shall contain a minimum of fifty (50) square feet of usable play space for each child using the area at one time.

(a) The outdoor play area must be enclosed by a fence or barricade at least four (4) feet in height. The Department may in at its discretion grant a waiver from this provision when the Department determines that the lack of such fence or barricade poses no apparent or potential risk to children.

(b) Outdoor play equipment shall meet the following guidelines:

1. There shall be developmentally appropriate outdoor play equipment for children who are in care more than three (3) daylight hours.

2. All outdoor play equipment and materials shall be sufficient in amount and variety so that children have an opportunity to participate in a minimum of at least three (3) different types of play using either stationary equipment and/or portable play materials.

3. All outdoor play equipment shall be placed to avoid injury:

(i) Fall zones shall extend six (6) feet away from the perimeter of climbing equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.

(ii) Agencies with a playground continually certified as approved since prior to January 1, 2002, shall be permitted to maintain fall zones of at least four (4) feet; provided, however, that any expansion or addition shall comply with the six (6) feet fall zone required by part (i) above.

4. Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.

5. Portable equipment shall otherwise be anchored to the ground if the height and weight of the equipment exceeds the height and weight of the smallest child who will use the equipment.

6. An acceptable resilient surfacing material, as recognized by the Department, shall cover fall zones in accordance with the following:

Resilient Surfacing Material	Minimum Acceptable Depth
Wood chips or mulch	Six (6) inches
Double shredded bark	Six (6) inches
Pea gravel	Six (6) inches
Medium gravel	Eight (8) inches
Fine sand	Eight (8) inches
Course sand	Eight (8) inches
Artificial (manufactured) surface	Manufacturer recommendation

(c) The outdoor areas where children play or are cared for shall be properly maintained and a written playground maintenance plan shall be prepared by the program to address routine, remedial, and preventive maintenance and to designate who is responsible for each maintenance need.

(d) A pre-play/care inspection of the outdoor play area shall be completed by the program before children play outdoors.

(e) The outdoor play/care areas shall be free of hazardous items that could be accessible to children.

(f) Outdoor areas shall be free of all animal wastes.

~~(5)~~(6) Drinking water from individual single service cups or an approved drinking fountain shall be provided in all occupied rooms.

~~(6)~~(7) All garbage shall be removed from the building daily and all garbage storage receptacles shall be outside and kept closed with tight-fitting lids. The area surrounding the garbage containers shall be kept clean.

~~(7)~~(8) The building shall be kept clean and maintained in good repair, without unsafe cracks, leaks or unsatisfactory plumbing.

~~(8)~~(9) Adequate natural and/or artificial lighting shall be provided throughout the facility.

~~(9)~~(10) All rooms used by children shall be maintained at a temperature of between sixty-eight (68) to seventy-eight (78) degrees Fahrenheit by means of heating, cooling or ventilation sources approved for use.

~~(10)~~(11) Stoves, hot radiators, steam and hot water pipes, fans, or other heat generating equipment shall be adequately protected by screens, guards, insulation, or suitable measures that will protect children from coming in contact with them.

~~(11)~~(12) Broken glass, trash, and debris shall be kept removed from the building and grounds.

~~(12)~~(13) Swimming pools and/or wading pools shall be fenced and shall not be used without prior approval by the Department of Health.

~~(13)~~(14) Grounds, tire swings and containers shall have adequate drainage to prevent standing water that can breed mosquitoes and other insects.

(15) If animals or birds are kept in classrooms as pets, they shall be caged away from the food storage and preparation or service area, and cages kept clean.

~~(14)~~(16) Turtles are prohibited as classroom pets.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-202, 49-1-302(l), and 49-1-1101 through 49-1-1109.* ***Administrative History:*** *Original rule filed April 30, 2002; effective July 14, 2002. Amendment filed September 6, 2007; effective January 28, 2008. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.13 TRANSPORTATION.

(1) If a program provides transportation or contracts for transportation, the program's management shall be fully responsible for all transportation of children, including between home and program (if different facility from school), to and from school, and on field trips.

(2) Transportation services shall be operated in compliance with all state laws, regarding school transportation and all rules and regulations, promulgated by State Board of Education regarding school transportation and school buses.

(3) Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction or control of the school-administered program, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by T.C.A. § 49-6-2111 and defined in State Board of Education Pupil Transportation Rule 0520-01-05-.01(2).

(a) Automobile insurance coverage for non-school community-based organizations which transport children shall comply with the following:

1. Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars ($500,000) combined single limit of liability.

2. Medical payment coverage shall be maintained in the minimum amount of five thousand dollars ($5,000) for injuries to children being transported in vehicles owned, operated or leased by the non-school community-based organization's program.

(4) Vehicles used to transport children must be in compliance with the Federal Motor Vehicle Safety Standards as defined by Title 49 part 571 of the Code of Federal Regulations and the Tennessee Minimum School Bus Standards, adopted by the State Board of Education as required by Rule 0520-01-05-.02.

(5) Fifteen (15) passenger vans are prohibited.

(6) Children may be transported in passenger vehicles, however, children of all ages but must be in compliance with passenger restraint laws, T.C.A. § 55-9-602 at all times in passenger vehicles, and must be transported in rear seats.

(a) Any child under one (1) year of age or any child weighing twenty pounds (20 lbs.) or less shall be properly secured in a child passenger restraint system in a rear facing position.

(b) Any child, one (1) through three (3) years of age, weighing greater than twenty pounds (20 lbs.) shall be properly secured in a child passenger restraint system in a forward facing position.

(c) Any child, four (4) through eight (8) years of age and measuring less than four feet, nine inches in height shall be properly secured in a child seat or a belt-positioning booster seat.

(d) Any child, nine (9) through twelve (12) years of age, measuring four feet, nine inches or more in height, shall be properly secured in a passenger motor vehicle using a seat belt system in the rear seat of the vehicle.

(e) Any child, thirteen (13) through fifteen (15) years of age, shall be properly secured in a passenger motor vehicle using a seat belt system.

(7) Federally approved child care restraint systems must be provided and utilized during the transport of any child three (3) years of age or under on a school bus.

(8) No child shall be allowed to ride on the floor of a vehicle, and no child shall be placed with another child in the same restraint device.

(9) All school buses shall be inspected in compliance with the Rules and Regulations for School Bus Inspection, Chapter 1340-03-03, promulgated by and regulated by the Tennessee Department of Safety.

(10) All persons hired for the position of "school bus driver" shall:

(a) Be issued a commercial driver's license (CDL) by the Tennessee Department of Safety;

(b) Have ~~an~~ the "S" and "P" endorsements if employed by a public school or school system;

(c) Have a "P" endorsement and completion of school bus driver training if employed by a nonpublic school or a non-school, community based organization;

(d) Know and understands the school system's or private school's policies and procedures concerning transportation and to bus driver's responsibilities and duties;

(e) Have no criminal offense or criminal record of a violation of any of the following:

1. Driving under the influence of an intoxicant as prohibited by T.C.A. § 55-10401;

2. Vehicular assault as prohibited by T.C.A. § 39-13-106;

3. Vehicular homicide as prohibited by T.C.A. § 39-13-213(a)(2);

4. Aggravated vehicular homicide as prohibited by T.C.A. § 39-13-218; or

5. Manufacture, delivery, sale or possession of a controlled substance as prohibited by T.C.A. § 39-17-417;

(f) Complete the annual physical and mental examinations of school bus drivers as required by T.C.A. § 49-6-2108;

(g) Complete the annual training for school bus drivers presented by the Tennessee Department of Safety (school bus driver training is not required for drivers of passenger vehicles only); and

(h) Complete CPR and First Aid certifications. If driver is accompanied by regular staff that has certification in CPR and First Aid, the driver does not have to meet this requirement.

(11) Drivers of any passenger vehicle, used to transport children, shall possess a current, valid driver's license and endorsement required by the Tennessee Department of Safety for transporting children in the applicable type of vehicle.

(12) Seating capacity on a school bus shall be in compliance with T.C.A. § 49-6-2110 (a), requiring a minimum of thirteen linear inches of seat space for each student.

(13) Vehicles used for transporting children shall:

(a) Have a clearly visible identifying sign. Exceptions: Vehicles used exclusively for the occasional field trip; vehicles used exclusively for the limited provision of emergency transportation, e.g., vehicle used when regular vehicle has a mechanical breakdown; and The Department may waive the vehicle identification requirements for programs under the direction or control of a public agency.

(b) Have fire extinguishers, emergency reflective triangles, a first aid kit, and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced by all staff responsible for transporting children on a regular basis. (Not applicable to occasional transportation by volunteers). All items must be secured.

(14) Transportation routes shall be (school bus routes) in compliance with T.C.A. § 49-6-2105 to ensure no child is on a school bus more than one and one-half (1½) hours in the morning and one and one-half (1½) hours in the afternoon.

(15) Firearms are prohibited in vehicles used to transport children.

(16) Supervision of children in vehicles shall meet the following requirements:

(a) An adult must be in the vehicle whenever a child is in the vehicle.

(b) An adult must be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.

(c) Transportation of children with special needs shall be in compliance with the Individual Education Plan (IEP) for each child.

(d) Adult Monitor Requirements.

1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks to four (4) years of age.

2. An adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks to four (4) years of age, regardless of the total number of children being transported.

3. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanently or temporarily non-ambulatory) of any age.

4. An adult monitor, in addition to the driver, is required if more than ten (10) Voluntary P~~p~~re-K ~~-k~~indergarten students four (4) years of age are transported on the same bus.

5. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position which will allow:

(i) Each child to be seen with a quick glance;

(ii) Each child to be heard at all times;

(iii) Each child's activities to be observed; and

(iv) The monitor to respond immediately should there be an emergency.

(17) A passenger log shall be used to track each child during transportation.

(a) The first and last name of each child received for transport shall be recorded on the passenger log. A sibling group shall not be listed as a single group entry, for example, "Smith children".

(b) The driver of the vehicle or the monitor shall be designated as the person responsible for completing the log.

(c) As each child is loaded onto the vehicle the time the child was placed on the vehicle shall be recorded on the passenger log.

(d) The passenger log shall be updated immediately upon the child being released from the vehicle. The time the child was released shall be recorded and initialed by the person responsible for completing the log.

(18) All drivers shall comply with the following:

(a) Bus drivers who do not return to a central depot shall check at the end of every run to make sure that no person remains on the bus as defined in T.C.A. § 49-6-2114. Immediately upon unloading the last child the driver shall:

1. Physically walk through the vehicle;

2. Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

3. Sign the log, with the driver's full name, indicating the children are all unloaded.

(b) If a child is expected for transport (based on the roster) but is not present at the location, the driver may not leave the location without checking with a designated member of staff and the center. If the designated member of staff is not present in the loading area and there is not an additional adult on the vehicle, all children will accompany the driver into the facility to verify the whereabouts of the child.

(c) When Pre-Kindergarten children are transported on the return route, the school bus driver must not leave a Pre-K child at the child's home or bus stop unless the parent or other authorized person is present. If the parent or other authorized person is not present, the Pre-K student is not to exit the bus and the school bus driver is to follow the process/policy developed by the school system in collaboration with the Department of Children's Services and/or the police or sheriff's office.

(19) All programs providing transportation for child care shall provide a written statement to the Department:

(a) Stating the type(s) of transportation offered, e.g. transportation to and/or from school, transportation to and/or from child care program, transportation to and/or from child's home, etc.;

(b) Listing and describing the vehicles that will be used for the transportation of children;

(c) Describing any contracts, agreements or arrangements with any third (3rd) parties for the provision of transportation services, with copies of such contracts or agreements or arrangements available upon the Department's request;

(d) Describing the agency's policy, procedures and staff training plans for maintaining compliance with responsibilities for loading and unloading and tracking each child;

(e) Describing the agency's management plan for ensuring all transportation staff properly perform their duties in accordance with the licensing rules and agency policies and procedures;

(f) Describing the agency's policy, procedures and staff transportation training plans for maintaining compliance with transportation rules and state law; and

(g) Describing the agency's policy, procedures and staff training plans for the emergency evacuation of the vehicle.

(20) Non-school, community-based organization vehicles shall meet the following requirements:

(a) Annually, all non-school, community-based organization's vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers shall be inspected in accordance with the schedule established by the Department of Safety. Any maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the non-school, community-based organization.

(b) The non-school, community-based organization's vehicle may have a stop arm in accordance with T.C.A. § 55-8-151(d) if the bus driver has completed annual school bus driver training provided by the Department of Safety.

(c) The non-school, community-based organization's vehicle with a stop arm is required to be distinctly marked "Youth Bus" on the front and rear thereof in letters not less than six inches (6") in height and legibly written.

(d) No vehicle which does not pass the inspections required in part (a) shall be used by the non-school, community-based organization to provide transportation services until necessary repairs, as determined by Department of Safety, have been made.

(e) Non-school, community-based organization vehicles shall receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.

(f) Vehicle equipment shall be certified as inspected at least every four thousand (4,000) miles, if not covered by and/or otherwise serviced in accordance with the manufacturer's maintenance schedule, including: brakes; steering; oil levels; coolant; brake, windshield-washer and transmission fluids; hoses and belts; and tires.

(g) The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children: fire extinguisher; emergency reflective triangles; first aid kit; blood-borne pathogenic clean-up kit; and seat-belt cutter or similar device designed to immediately release the vehicle's child restraint system(s) in an emergency.

(h) The bus driver or transportation monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under part (g).

(i) The non-school, community-based organization shall maintain documentation that the following daily inspections have been performed and any necessary repairs completed or other appropriate action taken before transporting children.

1. A visual inspection of the vehicle's tires for wear and adequate pressure;

2. A visual inspection for working headlights and taillights (brake lights and back-up lights), signals, mirrors, wiper blades and dash gauges;

3. An inspection of properly functioning child and driver safety restraints;

4. An inspection for properly functioning doors and windows;

5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need to do so;

6. A determination that the vehicle has adequate fuel; and

7. An inspection for, and cleaning of, debris from the vehicle's interior.

(j) Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.

(k) Any vehicle, contracted by a non-school community-based organization for the purposes of transporting children in a program administered by a non-school, community-based organization, shall be a for hire commercial passenger vehicle properly registered with the Federal Motor Carrier Safety Administration.

(l) The contracted vehicle shall have a commercial license plate (tag) and shall have minimum levels of liability insurance as defined by the Federal Motor Carrier Safety Administration rule § 387.33.

1. Any vehicle with seating capacity of sixteen (16) passengers or more shall have five million dollars ($5,000,000) liability coverage.

2. Any vehicle with seating capacity of fifteen (15) passengers or less shall have one and one half million dollars ($1,500,000) liability coverage.

Authority: *T.C.A. §§ 4-5-201 et seq., 49-1-302(l), 49-6-2101 through 49-6-2117, 55-8-151, 55-9-602, 5510-401 and 55-50-101 et seq.* ***Administrative History:*** *Original rule filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010. Emergency rule filed August 30, 2010; effective through February 26, 2011. Repeal and new rule filed December 21, 2010; effective through March 21, 2011. Emergency rule filed August 30, 2010 and to have been effective through February 26, 2011 expired; on February 27, 2011 the rule reverted to its previous status. Repeal and new rule filed December 21, 2010; effective through March 21, 2011. Amendment filed September 29, 2011; effective February 28, 2012.*

0520-12-01-.14 CARE OF CHILDREN WITH SPECIAL NEEDS.

(1) When children with special needs are enrolled in a child care program, all reasonable and appropriate efforts shall be made to provide those children equal opportunity to participate in the same program activities as their peers.

(2) Parents or other appropriate individual identified by the parent shall provide information and, as appropriate, training to teachers regarding special needs/techniques/emergency measures, as utilized in the child's home to ensure the child's well-being.

(3) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child with a disability by helping him/her become independent and develop self-help skills.

(4) Behavior management techniques or program activities which would tend to demean or isolate the child are prohibited.

(5) The program shall inform parents of any specialized services available from the program, and if the program is aware of any specialized services available through third parties, shall additionally inform the parent of such services.

(6) Efforts to provide specialized service (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for mentally retarded) either directly or by referral, shall be conducted only with written permission by the parent in accordance with the Individual Family Service Plan (IFSP) or Individual Education Plan (IEP) and documented in the child's record. Any information exchange regarding these services that is shared with or received from third parties shall also be documented.

(7) The program shall have written individualized emergency plans for each child with a disability who requires more assistance in emergencies than other children of the same age or in the same group. The program shall maintain documentation that the Emergency Plan is practiced monthly.

(8) Each non-verbal child's daily activities, including, as applicable to the individual child, the time and amount of feeding, elimination, times of diaper changes, sleep patterns, and developmental progress, shall be recorded and shared with the parent(s) daily.

(9) Diapering of school-age children with special needs shall be completed as follows:

(a) Children shall be changed in a location designated for that purpose and which provides privacy from other children and adults.

(b) School-age children may be diapered on the floor on a nonporous washable, surface that adequately protects the floor from contamination.

(c) The floor beneath the diapering surface shall be immediately cleaned after each diapering.

(d) The diapering area shall be located near a hand washing lavatory. This area shall be in a separate location from food preparation/service area.

(10) Isolation and physical restraint shall be in accordance with T.C.A. §§ 49-10-1301-1305:

(a) A student receiving special education services, as defined by T.C.A. § 49-10-102(4), may be isolated or restrained only in emergency situations and only if such isolation or restraint is provided in the student's IEP in emergency situations.

(b) If school personnel impose restraints or isolation in an emergency situation, the school shall immediately contact the appropriate school personnel designated to authorize isolation or restraint. The student's parent or guardian shall be notified, orally or by written communication, the same day the isolation or restraint was used.

(c) If the student's individualized education program does not provide for the use of isolation or restraint for the behavior precipitating such action or if school personnel are required to use isolation or restraint longer than five (5) minutes, then an individual education program meeting shall be convened within ten (10) days following the use of such isolation or restraint. If the behavior precipitating such action also warrants a change of placement,

the child will have all rights provided under applicable state and federal law.

(d) School personnel who must isolate or restrain a student receiving special education services, as defined by T.C.A. § 49-10-102(4), whether or not such isolation or restraint was in an emergency situation or provided for in the student's individual education program, shall report the incident to the appropriate school personnel designated to authorize isolation or restraint who shall record the use of such isolation or restraint and the facts surrounding such use. A copy of such record shall be made available at individual education program meetings and upon the request of the student's parent or legal guardian.

(e) If the appropriate school personnel designated to authorize isolation or any person having knowledge of the isolation or restraint, have reason to believe that such isolation or restraint was unreasonable, unsafe, or unwarranted, and such isolation or restraint caused injury to the student, the incident shall be reported pursuant to T.C.A. § 37-1-403.

(f) School personnel shall remain in the physical presence of any restrained student and shall continuously observe a student who is in isolation or being restrained to monitor the health and well-being of such student.

(g) Administering a chemical restraint to a student receiving special education services, as defined by T.C.A. § 49-10-102(4), is prohibited, provided that nothing in this subsection shall prohibit the administration of a chemical restraint when administered for therapeutic purposes under the direction of a physician and with the child's parent or guardian's consent to administer such chemical restraint.

(h) Administering a noxious substance to a student receiving special education services, as defined by T.C.A. § 49-10-102(4), is prohibited.

(i) Use of any mechanical restraint on any student receiving special education services, as defined by T.C.A. § 49-10-102(4), is prohibited.

(j) Any form of life threatening restraint, including restraint that restricts the flow of air into a person's lungs, whether by chest compression or any other means, to a student receiving special education services, as defined by § 49-10-102(4), is prohibited.

(k) The use of isolation or physical holding restraint as a means of coercion, punishment, convenience or retaliation on any student receiving special education services, as defined by T.C.A. § 49-10-102(4), is prohibited.

(l) The use of physical holding restraint in the following circumstances is not prohibited:

1. The brief holding by an adult in order to calm or comfort;

2. The minimum contact necessary to physically escort a student from one area to another;

3. Assisting a student in completing a task or response if the student does not resist, or resistance is minimal in intensity or duration; or

4. Holding a student for a brief time in order to prevent any impulsive behavior that threatens the student's immediate safety.

5. The program is not required to notify the student's parent or guardian pursuant to this Chapter in any of the circumstances listed in this subdivision (l).

(m) The use of a locked door, or use of any physical structure that substantially accomplishes

the intent of locking a student in a room or structure, to isolate or seclude a student, is prohibited.

Authority: *T.C.A. §§ 4-5-201 et seq., 37-1-403, 49-1-302(l), 49-1-1101 through 49-1-1109, 49-10-102, 4910-1301 through 1306.* ***Administrative History:*** *Original rule filed March 1, 2005; effective July 29, 2005. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010.*

0520-12-01-.15 SCHOOL AGE BEFORE AND AFTER SCHOOL PROGRAMS

(1) All before- and after-school programs shall have an adequate budget.

(2) Records shall be kept on all ~~adolescents~~ school age students enrolled in each program.

(3) Each program shall post their annual certificate of approval and provide parents with a copy of the policies and procedures.

(4) Parents shall have access to all areas of the program when the student is present.

(5) Immediate access to all areas of the school or program shall be granted [illegible] representatives and other inspection authorities (i.e., fire safety, sanitation, [illegible] operating hours.

(6) Any program found in operation without oversight from the D~~d~~epartment of E~~e~~ [illegible] reported to local authorities as indicated by T.C.A. § 49-1-1105(a).

~~(4)~~(7) If the program provides transportation, the transportation shall be in accordance with the rules of this Chapter.

~~(5)~~(8) Staff

(a) Each program shall have a director responsible for the day to day operations, including staff and program.

1. ~~The director~~The ~~shall~~director shall be at least twenty-one (21) years of age and shall ~~have at~~have ~~least~~at ~~a~~least a ~~high school~~ diploma ~~and~~ four (4) years' experience working with ~~adolescents~~ school age students.

2. Directors shall have eighteen (18) hours in-service training each year.

3. A person shall be designated to serve as acting director when the director is absent.

(b) All staff shall be a minimum of eighteen (18) years of age and one (1) staff member in each group shall have a high school diploma.

1. High school students in grade twelve (12) may work in before or after school programs but shall not count in ratios and shall not be left alone with children.

2. All staff shall have twelve (12) hours of in-service training each year.

~~All staff shall be physically, mentally and emotionally stable and shall [illegible] adolescent behavior and development.~~

(c) All staff shall be physically, mentally, and emotionally stable and shall [illegible] school age behavior and development.

(d) All new employees shall have orientation and ~~child abuse prevention~~ training on the following ~~prior to assuming duties; or before working with the adolescents.~~

1. Abusive head trauma;
2. Emergency preparedness;
3. Health and safety;
4. Developmentally appropriate practice;
5. Effective afterschool programming;
6. Supervision;
7. Parent communication; and
~~3.~~ 8. Any additional training identified by the Department.

~~(7)~~(8) Staff shall be in compliance with all criminal history background checks required under 0520-12-01-.07.

~~(8)~~(9) Program volunteers shall complete criminal history background checks and appropriate in-service training.

~~(9)~~(10) Staff records shall be maintained for each employee with the following: educational background, reference checks, TBI check, in-service training, physical exams and reviews.

~~(6)~~(9) Each grouping of children shall have adult supervision and shall meet the following minimum staffing requirements:

(a) Minimum staffing requirements per group:

Age	Max. Group Size	Adult: Child Ratio
Elementary School	No Max	1: 20
Middle School	No Max	1:30
High School	No Max	1: 30

(b) Swimming and field trips require ratios be doubled.

~~(7)~~(10) All program equipment shall be in good condition and kept clean.

~~(8)~~(11) Students shall have time for self-directed activities, as well as, adult-directed activities.

(a) Students shall have choices regarding activities and an opportunity to help plan activities.

(b) Parents shall be informed of any TV or movies or computer games to be shown.

(c) Staff shall monitor computer use.

(d) Sports and physical activity shall be offered, weather permitting.

(e) Students shall have opportunities for learning, self-expression, and enrichment activities each day.

(f) Students shall receive child abuse awareness and personal safety information.

~~(9)~~(12) Teachers shall be knowledgeable of developmentally appropriate ~~adolescent~~ school-age behavior.

(a) Discipline shall be in accordance with rules and policy adopted by the program to define program objectives, student expectations, behavioral code, and discipline procedures. The rules and policy shall be made available to all participants in an accessible document such

as a student handbook.

(b) No corporal punishment is allowed.

(c) Good behavior shall be praised and encouraged.

~~(10)~~(13) Programs shall comply with the following rules for health and safety:

(a) Students shall have immunizations in accordance with this Chapter.

(b) Instructions for any student's special health needs shall be documented.

(c) Parents shall be notified if their student is hurt or becomes ill.

(d) All parents shall be notified of any communicable diseases in accordance [illegible].

(e) Use of medications shall be in accordance with school system's policy for the administration of medications and health care procedures as defined by T.C.A. § 49-5415 and State Board of Education guidelines.

(f) Smoking and the possession or consumption of alcohol is prohibited.

~~Staff shall have documentation they are physically and mentally able to work with~~ [illegible]

(g) There shall be a staff member present at all times who has current certification in CPR and first aid training.

(h) A first aid kit must be on the premises as well as a first aid chart.

(i) There shall be no firearms on the premises.

(k) There shall be an Emergency Management Plan, a written plan to protect students in event of disaster, such as fire, tornado, earthquake, chemical spills, floods, etc.

~~(11)~~(14) Snacks and meals (if full day program) shall be scheduled regularly.

(a) Students will receive meals and snacks based on the amount of time spent in the program.

(b) Menus shall be posted.

(c) Special diets and instructions shall be provided in writing.

~~(12)~~(15) Programs shall be in buildings that are not hazardous or dangerous to children.

(a) All facilities shall have annual fire and health inspections.

(b) All programs shall have a working telephone.

(c) Programs shall have thirty (30) square feet of usable space per adolescent.

(d) Outdoor recreation/sports area shall have fifty (50) square feet per student.

~~(13)~~(16) Programs serving students with disabilities shall follow the rules defined in this Chapter.

(a) Adaptations shall be directed towards helping the student become independent and

developing self-help skills.

(b) Specialized services provided shall be documented and information shared with appropriate parties.

Authority: *T.C.A. §§ 49-1-302(l), 49-1-1101 through -49-1-1109, 49-6-707.* ***Administrative History:*** *Original rule filed March 15, 2010; effective August 29, 2010.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Nick Darnell	X				
Mike Edwards	X				
Bob Eby	X				
Gordon Ferguson	X				
Elissa Kim	X				
Lillian Hartgrove	X				
Wendy Tucker	X				
Darrell Cobbins	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 10/19/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Date: 12/20/2018

Signature: Amy Owen

Name of Officer: Amy Owen

Title of Officer: Director of Policy and Research

Subscribed and sworn to before me on: 12/20/18

Notary Public Signature: C. [illegible]

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): Rule 0520-01-12

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

Herbert H. Slatery III
Attorney General and Reporter

1/17/2019
Date

Department of State Use Only

Filed with the Department of State on: 01/25/19

Effective on: 04/25/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Revenue
SUBJECT:	State Sales and Use Tax
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 67-1-102, 67-6-402, and 67-6-501
EFFECTIVE DATES:	January 1, 2017
FISCAL IMPACT:	The Department estimates that the promulgation of the rule will increase state and local revenue by at least $200 million per year when full compliance is reached, with no additional state or local expenditures. Due to pending litigation in other states and potential litigation in Tennessee on this issue, it is unknown how many dealers will choose not to register and collect tax pending the outcome of the litigation. (This fiscal impact statement was submitted by the department when the rule was filed on 10/3/16.)
STAFF RULE ABSTRACT:	Rule 1320-05-01-.129 sets out sales and use tax registration and collection requirements for out-of-state dealers who regularly and systematically solicit business in Tennessee and who made more than $500,000 in sales in Tennessee during the previous twelve-month period. These dealers must register for sales and use tax by March 1, 2017, and begin to collect and remit tax by July 1, 2017, or a later date by the Department. An out-of-state dealer who meets the $500,000 threshold after March 1, 2017, must register and begin to collect tax by the first date of the third calendar month following the month in which the dealer met the threshold.

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.

Summary of the Department of Revenue's Responses to Public Comments

The State of Tennessee is heavily dependent on the sales tax for revenues. Internet sales continue to expand each year, resulting in ever increasing losses of sales tax revenue to Tennessee. Additionally, both Tennessee and out-of-state businesses that collect the sales tax are put at a competitive disadvantage with respect to businesses that do not. Out-of-state businesses that do not collect the sales tax have a nearly 10% price advantage over businesses that collect the tax, in addition to the benefit that many derive from in-state stores effectively functioning as show rooms for the products that out-of-state businesses sell.

This rule protects the State of Tennessee's tax base and fiscal health as remote sales continue to increase each year. This rule also ensures that the State's economy remains strong and that all businesses selling to Tennessee consumers compete on a level playing field.

The Department of Revenue received several comments in support of the rule filing and several comments opposing the rule filing. It also received comments that did not express support or opposition, but instead made specific inquiries or suggestions about the rule filing.

Almost all participants in the Rulemaking Hearing process provided comments on similar topics, which the Department has grouped into the following categories: 1) The question of the rule's constitutionality in light of the U.S. Supreme Court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); 2) The balancing of in-state and out-of-state business interests; 3) The impact of the rule on Tennessee businesses and on small businesses; 4) The cost of compliance with the rule; 5) Whether the rule enacts a new tax; 6) The mechanics of the rule; 7) Potential litigation challenging the rule; and 8) The economic effect of the rule.

1. Constitutionality of the rule

A number of commenters addressed the constitutionality of the rule under the U.S. Supreme Court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). In *Quill*, the Court held that North Dakota had violated the dormant Commerce Clause by requiring an out-of-state catalogue business with no physical presence in North Dakota to collect a use tax from its North Dakota customers, because that business lacked a "substantial nexus" with North Dakota.

Some commenters took the position that the rule is unconstitutional under *Quill*. These commenters asserted that the considerations motivating the Court's decision in *Quill* are still relevant; in particular, that the cost of complying with sales tax collection and remittance obligations in other jurisdictions remains burdensome and that Congressional action is still the preferred solution. Commenters thought it unlikely that the U.S. Supreme Court will overrule *Quill*. One commenter asked whether the rule impermissibly exceeds the scope of the Retailers' Sales Tax Act, given that the sales tax laws provide for the collection of sales tax within the bounds of the Constitution.

Other commenters asserted that the Court's reasoning in *Quill* is no longer applicable because, among other things, the cost of complying with collection and remittance obligations in other jurisdictions continues to decline, and, despite twenty-four years of effort, Congress has been unable to pass legislation authorizing states to require out-of-state sellers to collect and remit sales and use taxes. Commenters noted that, in a concurring opinion in *Direct Marketing Association v. Brohl*, 135 S. Ct. 1124 (2015), Justice Kennedy expressed doubt about the continued validity of the bright-line rule adopted in *Quill* given the significant technological and economic changes that have occurred in the decades following that decision.

Response:

The Department believes the proposed rule is permissible under the Commerce Clause. In *Quill*, the U.S.

Supreme Court held that North Dakota had created an unconstitutional burden on interstate commerce, in violation of the dormant Commerce Clause, by requiring an out-of-state catalogue business with no physical presence in North Dakota to collect a use tax from its North Dakota customers, because that business lacked a "substantial nexus" with North Dakota. In doing so, the Court adhered to its previous decision in *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967), while acknowledging that the physical-presence rule *Bellas Hess* adopted was "artificial" and inconsistent with the Court's "contemporary Commerce Clause jurisprudence." *Quill*, 504 U.S. at 311, 315. The Court reasoned that the physical-presence rule would relieve out-of-state vendors of the burden of complying with other jurisdictions' tax collection duties, *id.* at 315 & n.8, and that Congress had "the ultimate power" to determine "whether, when, and to what extent the States may burden interstate mail-order" companies with that duty. *Id.* at 318.

In the twenty-four years since the U.S. Supreme Court decided *Quill*, there have been a number of significant developments that cast serious doubt on the continued validity of *Quill*'s physical-presence rule. First, as Justice Kennedy recognized in his concurring opinion in *Brohl*, the "Internet has caused far-reaching systemic and structural changes in the economy" in the years since *Quill* was decided, and there is a strong case to be made that "a business may [now] be present in a State in a meaningful way without that presence being physical in the traditional sense of the term." 135 S. Ct. at 1135 (Kennedy, J., concurring). When *Quill* was decided, "mail-order sales in the United States totaled $180 billion," and "the Internet was in its infancy." *Id.* As of 2008, "e-commerce sales alone totaled $3.16 trillion per year in the United States." *Id.* As Internet sales have increased, it has become increasingly evident that the physical-presence rule gives out-of-state businesses an unfair competitive advantage over in-state retailers and deprives States—particularly Tennessee, given its heavy reliance on sales tax—of a significant source of revenue.

Second, the cost and burden of complying with collection and remittance obligations in other jurisdictions has decreased due to an increasing array of affordable software options, among other developments. Tennessee, in particular, has greatly simplified sales tax collection by offering retailers without a traditional physical location in the state the option of collecting sales tax at a single uniform rate and filing a single return.

Third, although the Administration has encouraged Congress for several years to enact fair and reasonable legislation that requires sales tax collection by out-of-state sellers, and would welcome such a solution, Congress has not enacted any of the various proposals put forward in the twenty-four years since *Quill* was decided.

Given these developments, the Department believes there is a strong possibility that the U.S. Supreme Court will distinguish or reconsider *Quill*, as evidenced by Justice Kennedy's express invitation for the "legal system [to] find an appropriate case for [the U.S. Supreme] Court to reexamine *Quill* and *Bellas Hess*." *Brohl*, 135 S. Ct. at 1135 (Kennedy, J., concurring). The Department believes that the out-of-state businesses to whom the proposed rule would apply plainly have a "substantial nexus" with the State of Tennessee and therefore may be required to collect and remit sales tax from their Tennessee customers. The rule applies only to out-of-state businesses that have more than $500,000 of sales in Tennessee; a business that conducts such a substantial amount of sales activity in the State clearly benefits from the State's market and customers and will not be unduly burdened by having to collect and remit sales tax to the State.

A summary of the Department's response to related comments on compliance burdens is provided below.

2. Balancing in-state business interests with out-of-state business interests

Commenters stated that there is an unfair competitive advantage that out-of-state retailers enjoy by being perceived as making sales to Tennessee customers "tax free." The commenters pointed out that the State is predominantly dependent on sales tax revenue and that this rule is necessary to protect the tax base.

Commenters also asserted that Tennessee retailers bear higher compliance costs as a percentage of their sales tax collected because in-state retailers handle transactions made via cash, check, and credit card, whereas out-of-state online retailers generally process transactions made only via credit card or via a centralized payment service.

Some in-state businesses commented that they would be harmed by the rule because it would lead to other states enacting similar rules that would require them to collect sales tax in those states.

Response:

The Department believes that this rule will put all retailers on a level playing field in collecting and remitting the sales and use tax.

The issue is ultimately not one of in-state business vs. out-of-state business. Numerous businesses with no physical presence in Tennessee have chosen to register with the Department and collect Tennessee sales tax. These businesses are also placed at a price disadvantage when compared to retailers who do not collect the tax. This rule levels the playing field for these out-of-state businesses as well.

With respect to the comments that in-state businesses would be harmed by the rule because it would lead to their having to comply with other states' laws, the Department has addressed the concern over other states' actions below. The Department respectfully suggests that it is not good public policy for a state to decline to enforce its own sales tax laws because some members of the public do not wish to comply with possible future requirements imposed on them by other states seeking to enforce their own laws.

3. Impact specifically on Tennessee businesses and on small businesses in general

Commenters stated that the rule is burdensome on Tennessee businesses and on small businesses in general because it will force them to incur significant costs to comply with varying laws in over 10,000 taxing jurisdictions.

Commenters stated that promulgation of the rule encourages other states to enact similar laws that might require Tennessee businesses to collect sales tax on their sales into those states, which would be burdensome. Additionally, commenters stated other states might enact similar laws with lower thresholds for economic nexus, which might impose a compliance burden on Tennessee small businesses.

Commenters stated that the rule will expose Tennessee sellers to audit by other state taxing agencies, and force Tennessee businesses to defend themselves in other states' courts against other states' audits.

Response:

This rule does not impact Tennessee businesses. Likewise, this rule does not impact small businesses, regardless of location.

First, this rule by its express terms applies only to out-of-state retailers selling into Tennessee. Retailers with a physical presence in Tennessee are already required to collect and remit the sales tax, and are thus not subject to any new requirements as a result of this rule. Importantly, this rule does not require Tennessee businesses to comply with the laws of even a single other jurisdiction – let alone the laws of over 10,000 other jurisdictions. Tennessee businesses will not incur a single dollar of cost to comply with this rule. This rule simply requires remote sellers to comply with the same laws that Tennessee retailers already comply with.

Second, this rule does not apply to small businesses with no physical presence in Tennessee. To be subject to the rule's registration and tax collection requirements, a seller must make more than $500,000 in sales into Tennessee in a twelve-month period. Given that it is very unlikely that a seller without a physical presence in Tennessee will make sales solely into Tennessee, out-of-state businesses who meet the $500,000 Tennessee threshold are likely to have total sales that far exceed that amount.

Third, this rule will not expose Tennessee sellers to audit by other states' taxing agencies. The rule contains no provision allowing another state to audit Tennessee sellers. Similarly, the rule contains no provision requiring Tennessee sellers to comply with the sales tax laws of other states. Because Tennessee sellers are not exposed to other states' audits by this rule, it follows that Tennessee sellers will not be forced to defend themselves in other states' courts as a result of audits.

Fourth, the Department is unaware of any other states that are actively planning to follow suit if Tennessee promulgates the rule. If other states are considering taking similar action, it is extremely doubtful that they would abandon their efforts in the absence of a similar rule in Tennessee. Other states will proceed with any intended plans regardless of whether Tennessee promulgates a rule or not.

Finally, it is simply not good public policy to decline to enforce Tennessee's tax laws based on conjecture that other states might later choose to enforce their own tax laws, and might choose to enforce them in a manner that

might be burdensome to Tennessee businesses.

4. Cost of Compliance

Commenters stated that affordable tax management software options are readily available from multiple vendors. They point out that online retailers have dedicated "shopping carts" for ease of application in calculating tax before the purchase. They believe that many retailers already have some form of software to address this issue in states in which they already have physical presence.

One commenter provided evidence stating that 24 studies were completed between 1956 and 1983. Those studies found that the median cost of collection during that period was 4.4% of sales tax collected. A 1993 survey found the average compliance cost in all states had declined to 3.18% of sales tax collected. A 1990 PriceWaterhouseCoopers study found a national average cost of compliance to be 3.48% of tax collected. This is a decrease of almost 25% from the prior studies and largely due to technological changes and advances in web-based solutions. The Joint Cost of Collection Study found that from 2004-2005, average gross compliance costs had decreased again to 3.09% of sales tax collected.

One commenter made reference to a study entitled Retail Sales Tax Compliance Costs: A National Estimate, Volume One: Main Report, prepared for Joint Cost of Collection Study, conducted by PricewaterhouseCoopers, April 7, 2006. At page 18, the study concludes that the cost of compliance for remote dealers operating under multiple states' laws is not greater than the cost of compliance of dealers operating in only one state. This study found that the weighted average costs for retailers collecting tax in only one state is 6.17%, compared with 1.94% for retailers filing in more than ten states.

One commenter stated that the cost of compliance would cost small and medium sized businesses "hundreds of thousands of dollars." Commenters stated that small and medium sized businesses will spend $80,000 to $290,000 in setup and integration costs, and $60,000 to $260,000 each year on maintenance costs.

One commenter stated that requiring out-of-state sellers to collect the sales tax imposes a disproportionate collection burden on out-of-state sellers.

Response:

Generally speaking, the Department believes that the evidence presented in the studies cited above indicates that the overall cost of complying with sales and use tax collection and remittance is not burdensome and continues to decrease because of technological advances, software availability, and sales tax simplification. The Department notes that thousands of Tennessee businesses already comply with state sales tax laws, and the Department has not received any information indicating that their cost of complying with Tennessee's laws is prohibitive.

Importantly, this rule does not require any seller – in Tennessee or outside Tennessee – to comply with over 10,000 taxing jurisdictions' laws. It requires only that sellers comply with Tennessee law. For remote sellers, Tennessee effectively has one single taxing jurisdiction with a single return. Under TENN. CODE ANN. § 67-6-702(f), remote sellers currently can opt to collect a single local tax rate of 2.25% in addition to the 7% state tax rate on all sales made in to the state in lieu of the local option rate applicable to the location of the purchaser. Remote sellers, whether they opt to use the single rate or not, will file a single sales tax return for all sales into Tennessee.

The Department respectfully does not find it credible that remote sellers will incur costs of $60,000 to $260,000 each year to comply with Tennessee's single jurisdiction approach. Likewise, the Department does not believe that remote sellers will incur compliance costs that are higher than the costs borne by in-state sellers, especially given that remote sellers (unlike in-state sellers) have the option of electing to collect the sales tax at a single rate and to remit it to a single jurisdiction.

5. Assertion that the rule creates a new tax

Commenters stated that this rule would be seen as, or is in fact, a new tax. Some of these commenters cited a recent poll of Utah residents as evidence of this assertion. One commenter noted that Tennessee's non-collection of the sales tax from remote sellers makes purchasers think that the sale is tax-free.

Commenters asserted that promulgation of the rule constitutes taxation without representation, because out-of-state sellers have no political power in the State of Tennessee.

Commenters also stated that the rule does not create a new tax, because the sales and use tax is already due on the sales covered by the rule.

Response:

The rule does not create a new tax. Since 1947, the sales and use tax has been due on all retail sales of tangible personal property or taxable items in Tennessee, unless exempt. This rule does not change current law. Instead, the rule simply ensures that all out-of-state retailers who make sales in Tennessee, above the $500,000 threshold, properly collect and remit the tax due under current law.

The Department strongly disagrees that promulgation of the rule constitutes taxation without representation. No state is limited to taxing only individual residents who are entitled to vote in the state. Rather, each state may tax individuals and entities that have sufficient nexus with the state, regardless of whether they are entitled to vote there.

The Department respectfully suggests that any perception among the public that enforcement of sales tax laws is the equivalent of imposing a new tax – whether in Tennessee, Utah, or elsewhere – is an issue of public education and not a reason to decline to enforce the law.

6. Mechanics of Rule 129

One group of commenters provided suggestions relating to the mechanics of Rule 129. These suggestions were related to concerns regarding the calendar year period during which the retailer determines that the $500,000 threshold is met (note that the rule was originally drafted to reference meeting the threshold during a calendar year, instead of during the previous twelve-month period).

These concerns included: whether the rule will pose compliance challenges to sellers who did not anticipate meeting the threshold during the calendar year, but did; whether such sellers will be required to retroactively collect the sales tax on all sales that calendar year; and, whether safeguards were in place against double remittance of sales tax and use tax on the same sale, if there is a retroactive collection requirement. Additionally, the commenter suggested lowering the threshold for registration from $500,000 to $100,000 if there is a retroactive collection requirement. One commenter expressed concerns that there may be a duplication of sales tax collected and use tax remitted if the seller had to retroactively collect and remit the sales tax due.

One commenter asked whether the Department would impose any type of penalty on retailers who do not comply with the rule.

One commenter suggested that the Department delay the registration requirement until July 1, 2017, in case the legislature does not approve the rule filing. One commenter asked if the Department would delay implementation of the rule if a request is submitted for an Attorney General Opinion on the issue of whether the rule is constitutional.

Response:

The Department thoroughly considered the comments regarding the calendar year period during which the retailer determines that the $500,000 threshold is met. The Department appreciates the points commenters made about compliance challenges that might be faced by sellers who did not anticipate meeting the threshold during the calendar year, but in fact did. In response to these comments, the Department revised the period for determining whether a seller has met the $500,000 threshold from the current calendar year to the preceding twelve-month period. As revised, the rule will require a seller who meets the threshold during that twelve-month period, unless otherwise exempt, to register with the Department and begin collecting the applicable sales tax prospectively. The Department notes that, with respect to any possibility of duplication of sales and use tax remittance, promulgating the rule as revised eliminates the possibility of double remittance due to a seller retroactively remitting the tax due.

The rule does not contain any special penalty provisions for failure to comply with the rule. Rather, retailers who fail to comply with the rule would be subject to any applicable penalties already in existence under current law.

The Department does not believe that it is necessary to delay the rule's registration requirement until July 1, 2017, in case the rule does not receive legislative approval. First, registration will be a very easy, quick process; the Department has developed a simple online registration form that will be available on its website for sellers to use. Second, no remote seller who complies with the rule is required to collect and remit Tennessee sales tax until July 1, 2017. If the rule does not receive legislative approval, remote sellers will have ample notice of that fact before July 1, 2017, and will be able to plan accordingly. Finally, agencies routinely promulgate rules that contain due dates and other requirements that come into effect before final legislative approval. Given that legislative approval is never a certainty with any rule, the Department does not believe that the circumstances surrounding this particular rule warrant a delay in the registration deadline.

The Department does not believe that it would be necessary to delay implementation of the rule if a request were submitted for an Attorney General's opinion on the issue of whether the rule is constitutional. The Department must obtain approval of the rule from the Attorney General before filing the rule with the Tennessee Secretary of State. Therefore, the Attorney General will have already reviewed and approved the rule by the time it is filed.

7. Potential Litigation

Commenters suggested that rather than promulgating a rule, the Department should wait for the outcome of litigation over remote seller requirements pending in other states (litigation cases are currently pending in South Dakota and Alabama).

One commenter asserted that the State has estimated the cost of litigating the constitutionality of the rule to be in the hundreds of millions of dollars. Additionally, the commenter said that if the state loses a legal challenge to the rule, the state will lose its options and the door will be closed to an important source of revenue. Similarly, the commenter asserted that if the state litigates the rule, it will lose hundreds of millions of dollars in needed tax revenues.

In general, commenters concerned about potential litigation suggested that the State should not use its resources to defend a lawsuit challenging this rule.

Response:

Because the sales tax is not currently collected by many out-of-state retailers, the loss of millions of dollars in revenue is already occurring each year. The Department has concluded that requiring collection, litigating, and losing a challenge would not leave the State in any different a position than it is in already. The Department does not believe that a legal challenge to the rule would foreclose any other options the State might have in the future for collection of sales taxes or that an adverse legal decision regarding this rule would prevent the State from pursuing other options in the future. On the contrary, if the rule is not upheld by the courts, the State will be in exactly the same position that it is in right now to pursue alternative means.

The Department strongly disagrees that this rule filing should be delayed because litigation is pending in other states. State tax law is unique and individual to each taxing jurisdiction; Tennessee's proposed rule differs from the rules and statutes that are being challenged in South Dakota and Alabama. The courts may issue decisions in the Alabama and South Dakota cases that might not apply to Tennessee's rule, in which case Tennessee would have lost years in resolving the issue. It is possible that the parties in the South Dakota and Alabama cases will settle out of court or dismiss their lawsuits, again resulting in time lost for Tennessee. The Administration also does not believe that Tennessee should entrust the viability of its primary revenue source to the lawyers and courts of other states, however competent they may be.

The Department notes that no evidence was presented in support of the assertion that defense of a possible litigation case will cost the state hundreds of millions of dollars, either in litigation costs or in lost revenues. The State of Tennessee currently loses millions of dollars in revenue each year due to its inability to require out-of-state sellers to collect the tax on their sales in Tennessee. The Department is not aware of any study that suggests that promulgating a rule that is challenged in court will lead to an increase in lost tax revenue during the challenge. As noted above, an adverse decision would put the state in no worse a position than it is in already.

The Administration also believes that the use of State resources is warranted in this case. Tennessee is heavily dependent on the sales tax for revenues, and lost revenues far exceed the State's costs to defend any possible litigation. The Department is not aware of any estimate by the State that the cost of litigating the rule will be in the

hundreds of millions of dollars, or even anywhere remotely near that amount. Additionally, the State is well equipped to defend a legal challenge to the rule. At any given time, the State is the defendant in numerous lawsuits involving state taxes, many of which are highly complex and involve very high dollar amounts. Given the amounts of revenue at issue, the Administration believes that the use of State resources is more than justified to ensure Tennessee's fiscal health.

8. Economic Effect

Commenters stated that the rule will not actually increase Tennessee's revenues. One commenter specifically said that no additional revenue would be gained because the rule filing simply moves money from Tennessee residents' pockets to state coffers.

Other commenters expressed concern that out-of-state businesses will cease selling products into Tennessee so as to avoid complying with the requirements of this rule. One commenter provided information indicating that imposing an "internet sales tax" will not significantly increase state tax revenues nationwide.

One commenter stated that most catalogue sellers are not competing with "Main Street" retailers because they sell specialty products that cannot be found in brick-and-mortar stores.

One commenter stated that the rule would likely force Tennessee to transfer its tax dollars to private companies running federally mandated software. Another commenter suggested that the State would incur hundreds of thousands of dollars in costs to implement compliance programs.

Other commenters stated that the rule filing strengthens Tennessee's economy by putting Tennessee retailers on a level playing field with out-of-state retailers. These commenters also stated that the rule will reduce the unfair advantage enjoyed by out-of-state retailers who have a price advantage due to not charging sales tax and by effectively using their in-state competitors as show rooms. Commenters stated that the sustainability of Tennessee businesses depends on fair competition and a level playing field.

Response:

The Department believes that the economic effect of the rule will be to strengthen Tennessee's economy by putting retailers who are already collecting the sales tax on a level playing field with those who are not. The State of Tennessee continues to lose an ever-increasing amount of sales tax revenues due to sales in which tax is not collected. The increased compliance with Tennessee's sales tax laws as a result of the rule will ensure that those revenues are no longer lost.

The Department does not find credible the assertion that no additional revenue would be gained because the rule simply moves money from Tennessee residents' pockets to state coffers. Following that logic, the State should act to repeal the sales tax in its entirety. Moreover, the purpose of the rule is not to fill a "coffer," but instead to pay for important services, such as public schools and public safety, that are provided to residents.

Similarly, the Department does not find credible the assertion that out-of-state retailers will cease making sales to Tennessee residents because of the rule. First, only sellers with more than $500,000 in sales into Tennessee are subject to the rule; it is inconceivable that sellers would en masse abandon over a half million dollars a year in sales to avoid complying with the rule. Second, no evidence was presented indicating that South Dakota and Alabama (the two states that have imposed collection requirements on remote sellers) have experienced any refusal by out-of-state companies to make sales to their residents.

With respect to the comment indicating that increased enforcement by states of their sales tax laws would not significantly increase state tax revenues nationwide, the Department notes that Tennessee is far more dependent on sales tax revenues than the typical state. Most states rely heavily on income taxes for revenue, and therefore experience a smaller overall percentage of lost revenues due to uncollected sales taxes. The Department believes that Tennessee will experience much higher than average increases in revenue due to promulgation of the rule, compared to typical states or on a nationwide scale.

The Department does not agree with the assertion that most catalogue retailers do not compete with "Main Street" businesses. While some catalogue retailers may in fact sell products that are not typically found in brick-and-mortar stores, a large number of catalogue retailers do in fact sell the same types of items. The Department

believes that the large majority of out-of-state sellers offer the same products as in-state sellers, and that there is in fact direct and unbalanced competition between the two groups.

The Department disagrees that the rule would likely force Tennessee to transfer its tax dollars to private companies running federally mandated software. The rule contains no requirement that would require the State of Tennessee to pay private companies for software, federally mandated or otherwise.

The Department also disagrees with the assertion that the State would incur hundreds of thousands of dollars in costs to implement compliance programs. The Department has not asked for any increase in its budget related to the rule. The Department is well equipped to handle any increase in registrations, return filings, and audits that might result from implementation of the rule. Additionally, the Department's recently acquired state-of-the-art integrated tax software system has all of the functionality needed to administer the rule.

The Department believes that the rule strengthens Tennessee's economy by putting Tennessee retailers on a level playing field with out-of-state retailers. The Department finds credible the assertion that out-of-state retailers currently have a price advantage due to not charging sales tax and by effectively using their in-state competitors as show rooms. Additionally, out-of-state sellers would be unable to deliver their products into Tennessee without its infrastructure, which is supported by the State's tax revenues. Out-of-state sellers who send products into Tennessee without contributing to the maintenance of the State's infrastructure enjoy an advantage over those sellers who do contribute.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) **Types of small businesses directly affected:**
The amendment of Rule 1320-05-01-.63 has no impact on small business. New Rule 1320-05-01-.129 does not apply to small businesses. To be subject to the rule's registration and tax collection requirements, a seller without a physical presence in Tennessee must make more than $500,000 in sales into Tennessee in a twelve-month period. Given that it is very unlikely that a seller without a physical presence in Tennessee will make sales solely into Tennessee, out-of-state businesses who meet the $500,000 Tennessee threshold are likely to have total sales that far exceed that amount.

(2) **Projected reporting, recordkeeping, and other administrative costs:**
The amendment of Rule 1320-05-01-.63 creates no added reporting, recordkeeping, and other administrative costs. New Rule 1320-05-01-.129 requires certain out-of-state dealers who currently do not collect Tennessee sales and use tax to register with the Department of Revenue and begin to collect and remit the tax. Additional reporting and recordkeeping costs for these dealers will depend on various factors such as whether the dealer files its own returns or uses a vendor, and whether the dealer already remits sales and use tax in multiple states. Compliance with Tennessee's sales and use tax is simpler than in many other states because these dealers would collect the uniform state rate and could opt to collect a uniform local rate, eliminating any administrative complexity of collecting multiple jurisdictional rates.

(3) **Probable effect on small businesses:**
These rules do not have a negative effect on small businesses. New Rule 1320-05-01-.129 has a positive impact on small businesses in Tennessee that directly compete with out-of-state dealers.

(4) **Less burdensome, intrusive, or costly alternative methods:**
There is no less burdensome, intrusive, or costly alternative method available outside of these rules.

(5) **Comparison with federal and state counterparts:**
Alabama and South Dakota have promulgated similar provisions. Alabama promulgated Sales and Use Tax Rule 810-6-2-.90.03, effective January 1, 2016, which imposes a collection obligation on out-of-state sellers who had $250,000 or more in retail sales sold into Alabama in the previous year and engage in one or more of the activities listed in Ala. Code § 40-23-68. South Dakota imposed similar requirements effective May 1, 2016, through South Dakota SB 106, whereby an out-of-state seller with no physical location within the state must remit sales tax if it has gross revenues from sales of tangible property, any products transferred electronically, or services delivered into South Dakota exceeding $100,000 or it has 200 or more separate transactions of tangible property, products transferred electronically, or services delivered into South Dakota.

(6) **Effect of possible exemption of small businesses:**
Small businesses are effectively exempted from New Rule 1320-05-01-.129, through application of the $500,000 threshold spelled out in the rule.

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)

As a result of increased compliance with local tax laws by out-of-state dealers, New Rule 1320-05-01-.129 will increase local revenue without any additional local expenditures or administrative burdens.

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;

New Rule 1320-05-01-.129 sets out sales and use tax registration and collection requirements for out-of-state dealers who regularly and systematically solicit business in Tennessee and who made more than $500,000 in sales in Tennessee during the previous twelve-month period. These dealers must register for sales and use tax by March 1, 2017, and begin to collect and remit tax by July 1, 2017, or a later date set by the Department. An out-of-state dealer who meets the $500,000 threshold after March 1, 2017, must register and begin to collect tax by the first day of the third calendar month following the month in which the dealer met the threshold.

Rule 1320-05-01-.63 is amended by moving the content of subsection (2) to New Rule 1320-05-01-.129 for clarity and taxpayer convenience.

(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;

No state or federal law or regulation requires the promulgation of New Rule 1320-05-01-.129 or the amendment of Rule 1320-05-01-.63. Tenn. Code Ann. §§ 67-1-102 and 67-6-402 give the Commissioner of the Department of Revenue the power to prescribe rules.

(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;

Out-of-state dealers making sales of more than $500,000 in Tennessee in any twelve-month period are subject to these rules and therefore directly affected by them. Local governments are also directly affected by these rules, because compliance with the sales tax laws has a direct effect on local tax revenues.

A number of out-of-state dealers that do not currently collect Tennessee sales tax have urged rejection of the rule. A number of in-state dealers who sell online into other states have urged rejection of the rule, expressing concern that other states might impose similar compliance requirements on them in the future.

A number of in-state dealers have urged adoption of the rule because of the unfair competitive advantage out-of-state dealers maintain by not having to collect and remit Tennessee's sales and use tax. Several local Chambers of Commerce have urged adoption of the rule. Certain retail associations have urged adoption of the rule. Every local government that has contacted the Department urges adoption of the rule because of increased local revenue projections.

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

Judicial decisions that directly relate to the substance of the rule include the U.S. Supreme Court opinions in *Quill v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967). Judicial decisions that relate to the promulgation of the rule include *Direct Marketing Association v. Brohl*, 135 S. Ct. 1124 (2015).

The Attorney General and Reporter has not issued an opinion that directly relates to the rule.

In 1992, the U.S. Supreme Court in *Quill* held that North Dakota had created an unconstitutional burden on interstate commerce, in violation of the dormant Commerce Clause, by requiring an out-of-state catalogue business with no physical presence in North Dakota to collect a use tax from its North Dakota customers, because that business lacked a "substantial nexus" with North Dakota. In doing so, the Court adhered to its 1967 decision in *National Bellas Hess,* while acknowledging that the physical-presence rule *Bellas Hess* adopted was "artificial" and inconsistent with the Court's "contemporary Commerce Clause jurisprudence."

Justice Kennedy in his concurring opinion in the 2015 case *Direct Marketing Association v. Brohl* stated that the

"Internet has caused far-reaching systemic and structural changes in the economy" in the years since *Quill* was decided, and there is a strong case to be made that "a business may [now] be present in a State in a meaningful way without that presence being physical in the traditional sense of the term." Justice Kennedy expressly invited the legal system to find an appropriate case for the U.S. Supreme Court to reexamine *Quill* and *Bellas Hess*.

Given these developments, the Department believes that the out-of-state businesses to whom the proposed rule would apply have a "substantial nexus" with the State of Tennessee and therefore may be required to collect and remit sales tax from their Tennessee customers.

(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;

The Department estimates that the promulgation of the rule will increase state and local revenue by at least $200 million per year when full compliance is reached, with no additional state or local expenditures. Due to pending litigation in other states and potential litigation in Tennessee on this issue, it is unknown how many dealers will choose not to register and collect tax pending the outcome of the litigation.

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

David Gerregano, Deputy Commissioner
Kristin Husat, Assistant Commissioner and General Counsel
Barbara Sampson, Assistant Commissioner

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

David Gerregano, Deputy Commissioner
Kristin Husat, Assistant Commissioner and General Counsel
Barbara Sampson, Assistant Commissioner

(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

Office Address (all three representatives): Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, 11th Floor, Nashville, TN 37242

David Gerregano: (615) 532-8967; David.Gerregano@tn.gov
Kristin Husat: (615) 741-2348; Kristin.Husat@tn.gov
Barbara Sampson: (615) 532-6015; Barbara.Sampson@tn.gov

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

The Department of Revenue is not aware of any request for additional relevant information.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-02-16
Rule ID(s): 6329
File Date: 10/3/16
Effective Date: 1/1/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Revenue
Division:	
Contact Person:	Lauren Fields, Associate General Counsel and Assistant Director– Legal
Address:	Andrew Jackson Building, 500 Deaderick Street, 11th Floor Nashville, TN
Zip:	37242
Phone:	(615) 741-2348
Email:	Lauren.Fields@tn.gov

Revision Type (check all that apply):
X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1320-05-01	State Sales and Use Tax Rules
Rule Number	**Rule Title**
1320-05-01-.63	Registration Certificate
1320-05-01-.129	Out-of-State Dealers

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking Guidelines August2014.pdf)

Chapter 1320-05-01
Sales and Use Tax Rules

New

1320-05-01-.129 Out-of-State Dealers.

(1) Out-of-state dealers with a physical presence in Tennessee have a substantial nexus with this state. These dealers shall register with the Department for sales and use tax purposes and shall report and pay the appropriate tax to the Department on sales of tangible personal property and other taxable items delivered to consumers in this state.

(2) Out-of-state dealers who engage in the regular or systematic soliciation of consumers in this state through any means and make sales that exceed $500,000 to consumers in this state during the previous twelve-month period also have a substantial nexus with this state.

(a) By March 1, 2017, these dealers, if they have not already done so, shall register with the Department for sales and use tax purposes and therebv affirmatively acknowledge that they will collect and remit sales and use taxes to the Department beginning July 1, 2017. Beginning July 1, 2017, unless a later date is established by the Department by notice, these dealers shall report and pay the appropriate tax to the Department on sales of tangible personal property and other taxable items delivered to consumers in this state.

(b) Dealers who meet the $500,000 threshold after March i, 2017, shall register with the Department and begin to collect and remit Tennessee sales and use tax by the first day of the third calendar month following the month in which the dealer met the threshold. In no case, however, shall such dealers be required to collect and remit sales and use taxes to the Department for periods before July 1, 2017.

(3) Persons who purchase tangible personal property or other taxable items from any dealer that is registered with the Department must pay Tennessee sales and use tax to the dealer, unless the sale is otherwise exempt. Persons who import tangible personal property or other taxable items into this state and have not paid the sales and use tax to the dealer shall report and pay the use tax directly to the Department. unless the sale is otherwise exempt.

Authority: T. C .A. §§67 -1-102, 67 -6-402, and 67-6-501 .

* 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)
Not Applicable					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Revenue on 09/27/2016, 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: 06/16/16

Rulemaking Hearing(s) Conducted on: (add more dates). 08/08/16

Date: 9-28-16

Signature: Richard H. Roberts

Name of Officer: Richard H. Roberts

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9-28-16

Notary Public Signature: Tammy Crook

My commission expires on: 12-18-2017

TAMMY CROOK
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Chapter 1320-05-01 State Sales and Use Tax Rules

Rule 1320-05-01-.63 Registration Certificate
Rule 1320-05-01-.129 Out-of-State Dealers

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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

9/20/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/3/16

Effective on: 1/1/17

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Safety and Homeland Security
DIVISION:	Driver License Issuance
SUBJECT:	Classified and Commercial Driver Licenses and Temporary Driver Licenses
STATUTORY AUTHORITY:	The Real ID Act of 2005, Pub.L. 109-13, 119 Stat. 302, enacted May 11, 2005.
EFFECTIVE DATES:	May 1, 2019, through June 30, 2020
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking hearing rule sets forth the requirements and procedure for issuing Federally Compliant Licenses, pursuant to the Real ID Act of 2005.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

On December 17, 2018, the Department of Safety and Homeland Security held a rulemaking hearing regarding the proposed Rules and Regulations for Federally Compliant Licenses, Rule 1340-03-13.

At the hearing, there was no one in attendance and no public comments were presented. The record was held open for an additional two (2) weeks for further written comments to be submitted. No written comments were received during the comment period or the additional two week period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule will not affect small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will have no impact on local government.

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;

This rule set forth the requirements and procedure for issuing Federally Compliant Licenses. This is being done pursuant to the Real ID Act of 2005.

(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 Real ID Act of 2005, Pub.L. 109–13, 119 Stat. 302, enacted May 11, 2005.

(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;

Tennessee citizens that would like to fly domestic, commercial flights, enter nuclear plants or federal buildings will be most impacted by this rule.

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

This will have minimal impact on the state revenues and expenditures.

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

Liz Hale, Deputy General Counsel
Elizabeth Stroecker, Assistant General Counsel
Lori Bullard, Assistant Commissioner of Driver Services
Michael Hogan, Director of Driver License Issuance

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

Liz Hale, Deputy General Counsel
Elizabeth Stroecker, Assistant General Counsel
Lori Bullard, Assistant Commissioner of Driver Services
Michael Hogan, Director of Driver License Issuance

(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

312 Rosa L. Parks Avenue, 25th Floor, Nashville, TN 37243;
Lizabeth.Hale@tn.gov, 615-251-5349;
Elizabeth.Stroecker@tn.gov, 615-251-5199
1150 Foster Ave
Nashville, TN 37243
Lori.Bullard@tn.gov, 615-251-5106;

Michael.Hogan@tn.gov , 615-251-5140

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

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Sequence Number: 01-29-19
Rule ID(s): 8549
File Date: 1/31/19
Effective Date: 5/1/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Safety & Homeland Security
Division:	Driver License Issuance
Contact Person:	Elizabeth Stroecker
Address:	312 Rosa L. Parks Ave, 25th Floor, Nashville TN
Zip:	37243
Phone:	615-251-5199
Email:	Elizabeth.stroecker@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1340-01-13	Classified and Commercial Drivers Licenses and Temporary Driver Licenses
Rule Number	**Rule Title**
1340-01-13-.24	Federally Compliant Licenses

Amendments:

RULES
OF
TENNESSEE DEPARTMENT OF SAFETY
DIVISION OF DRIVER LICENSE ISSUANCE
CHAPTER 1340-01-13
CLASSIFIED AND COMMERCIAL DRIVERS LICENSES
AND TEMPORARY DRIVER LICENSES

1340-01-13-.24 FEDERALLY COMPLIANT LICENSES

(1) As used in this section:

(a) "Federally Compliant License" means a driver license or photo identification license, including a temporary driver license or temporary photo identification license, that complies with the Rules and Regulations of the United States Department of Homeland Security, 6 C.F.R. Part 37, in addition to the requirements of state law and regulations.

(b) "DHS" means the United States Department of Homeland Security.

(c) "Official purposes" means accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entered nuclear power plants.

(d) "USCIS" means the United States Customs and Immigration Services.

(2) An applicant who applies for a Federally Compliant License shall be required to comply with the document and verification requirements of this section 1340-01-13-.24.

(3) The Driver License Examiner will require positive proof of identity, date of birth, citizenship, lawful permanent residency, and Tennessee residency of any person applying for any class of Federally Compliant License.

(4) The Department reserves the right to require primary proof of identity on other transactions as determined by the Department.

(5) Primary Identity Documents

(a) For applicants seeking to obtain a Federally Compliant License the acceptable primary identity documents are limited to those approved by DHS pursuant to 6 C.F.R Part 37 that include original or certified documents with applicant's full legal name and date of birth. Acceptable documents are:

1. Certified Birth Certificate registered with the applicant's State Office of Vital Statistics or equivalent agency in the individual's State of birth;

2. Valid, unexpired U.S. passport;

3. Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State (DS-1350 or FS-545) or Report of Birth Abroad (FS-240);

4. Valid, unexpired Permanent Resident Card (Form I-551) issued by DHS or INS;

5. Unexpired employment authorization document (EAD) issued by DHS, (I-766 or

I-688B);

6. Unexpired foreign passport with a valid, unexpired U.S. visa affixed and accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States;

7. Certificate of Naturalization issued by DHS (N-550 or N-570);

8. Certificate of Citizenship issued by DHS (N-560 or N-561);

9. Federally compliant driver license or identification card issued in compliance with the standards established by 6 C.F.R. Part 37; and

10. Such other documents as DHS may designate by notice published in the Federal Register.

(6) Social Security Number

(a) In addition to providing primary identification, an applicant must provide proof of their Social Security Number, which shall be verified by the Department, for issuance of a Federally Compliant License or Federally Compliant CDL. Acceptable proof includes the following items as authorized by 6 C.F.R. Part 37:

1. Social Security Card (does not include metal or plastic replicas);

2. IRS Forms (W-2; SSA-1099); Non-SSA 1099 forms may also be accepted such as those issued for gambling winnings or other non-work compensation that may be on local jurisdiction 1099 forms;

3. Computerized Paycheck Stubs with the applicant's name and SSN printed on it; and

4. Such other documents as DHS may designate by notice published in the Federal Register.

(b) Individuals presenting the unexpired foreign passport (1340-01-13-.24(5)(f)) as primary identity document must present a verified SSN or demonstrate non-work authorized status through DHS or USCIS.

(c) The SSN will be verified through a Social Security Administration verification process that is compliant with 6 C.F.R § 37.13(b)(2).

(7) Citizenship, Permanent Residence, or Lawful Presence

(a) Applicants applying for a Federally Compliant License shall present proof acceptable to the Department that such applicant is a United States citizen or a lawful permanent resident of the United States. Such proof is limited to the following items as authorized by 6 C.F.R. Part 37:

1. Certified Birth Certificate issued by a U.S. state, jurisdiction or territory (Puerto Rico, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, Guam);

2. U.S. Consular Report of Birth Abroad (DS-1350 or FS-545);

3. Report of Birth Abroad of a Citizen of the U.S. (FS-240);

4. Valid, unexpired U.S. Passport;

5. Certificate of Naturalization (N550, N570 or N578);

6. Valid, unexpired Permanent Resident Card (I-551);

7. Valid, unexpired Conditional Resident Card (I-551);

8. Form I-94 Record of Arrival and Departure stamped Refugee, Asylee or Asylum; however, applicants who present the Refugee/Asylee I-94 must also present another USCIS document as supporting evidence such as:

   (i) Valid employment authorization document (I688B or I766);

   (ii) Notice of Action (I-797 or I-797C) indicating USCIS receipt of a pending or approved application for lawful permanent residency or adjustment of status (I-485) or application for employment authorization (I-765).

9. Such other documents as DHS may designate by notice published in the Federal Register.

(b) Applicants applying for a Federally Compliant License who are not US Citizens or Lawful Permanent Residents shall present proof acceptable to the Department that such applicant lawfully present in the United States.

1. An applicant who has submitted the following identity documents will not need to provide additional proof of lawful presence:

   (i) Certified Birth Certificate issued by a U.S. state, jurisdiction or territory (Puerto Rico, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, Guam);

   (ii) U.S. Consular Report of Birth Abroad (DS-1350 or FS-545);

   (iii) Report of Birth Abroad of a Citizen of the U.S. (FS-240);

   (iv) Valid, unexpired U.S. Passport;

   (v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570.

   (vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS.

2. An applicant who has submitted any other approved identity document will also need to present a second identity document or documentation issued by DHS or other Federal agencies demonstrating lawful status as determined by USCIS.

(8) Renewals and Duplicates

(a) Persons holding a Federally Compliant License shall be required to renew their license or obtain a duplicate in person if the previous renewal or duplicate was not obtained in person.

(b) Persons holding temporary Federally Compliant Licenses shall be required to renew in person to present updated lawful presence documents.

(c) The Department shall take an updated photograph of the applicant at any in person

transaction.

(d) The Department shall re-verify the renewal applicant's SSN and lawful status, if applicable, prior to renewing the Federally Compliant License.

(e) Any material change of name or other personally identifiable information shall require a person to renew or obtain a duplicate in person, and the person shall present acceptable documentation of the change.

(9) Federally Compliant License Documents

(a) Any Federally Compliant License card shall conform to the requirements of 6 C.F.R. Part 37.

(b) Any driver license or photo identification license, including temporary driver license or temporary photo identification license that is not Federally Compliant shall clearly state on the face of the card that it is not acceptable for official purposes and shall be distinguishable from Federally Compliant Licenses.

(10) The Tennessee Department of Safety, Division of Driver License Issuance hereby adopts the REAL ID Driver Licenses and Identification Cards regulations, and all subsequent amendments thereto, promulgated, approved, and adopted by the United States Department of Homeland Security and contained in Title 6 of the C.F.R. Part 37.

Authority: T.C.A. §§ 4-3-2009, 55-50-202, 55-50-321, 55-50-331.

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Safety and Homeland Security on January 2, 2019, 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: *10/26/18*

Rulemaking Hearing(s) Conducted on: (add more dates). *12/17/18*

Date: 1/2/2019

Signature: Elizabeth Stroecker

Name of Officer: Elizabeth Stroecker

Title of Officer: Assistant General Counsel, Legal Division

LORETTA MARIE BALTZ STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: January 2, 2019

Notary Public Signature: Loretta Marie Baltz

My commission expires on: March 3, 2020

Agency/Board/Commission: Tennessee Department of Safety and Homeland Security

Rule Chapter Number(s): 1340-03-13

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.

RECEIVED 2019 JAN 31 PM 4:09 SECRETARY OF STATE

Herbert H. Slatery III
Attorney General and Reporter

1/31/2019
Date

Department of State Use Only

Filed with the Department of State on: 1/31/19

Effective on: 5/1/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	Community and Social Services
SUBJECT:	Registration of Family Day Care Homes
STATUTORY AUTHORITY:	Not Available
EFFECTIVE DATES:	April 8, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule deletes the voluntary registration of family daycare homes as this rule is no longer utilized.

NOTE: Rule not submitted in redline form.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule will have no impact on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will have no 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;

This rule deletes the voluntary registration of family daycare homes as this rule is no longer utilized.

(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;

N/A

(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;

N/A

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

N/A

(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;

N/A

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

Rebekah Baker, Deputy General Counsel, Department of Human Services

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

Rebekah Baker, Deputy General Counsel, Department of Human Services

(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

Rebekah Baker, Deputy General Counsel, Department of Human Services, 400 Deaderick Street, Nashville, TN 37243, (615) 350-4153, Rebekah.A.Baker@tn.gov

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

N/A

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For Department of State Use Only

Sequence Number: 01-13-19
Rule ID(s): 8161
File Date: 1/8/19
Effective Date: 4/8/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Human Services
Division:	Community and Social Services
Contact Person:	Jude White, Assistant Commissioner, Community and Social Services
Address:	One Citizen's Plaza Bldg., 8th Floor, 400 Deaderick St., Nashville, TN
Zip:	37243
Phone:	(615)837-5092
Email:	Jude.White@tn.gov

Revision Type (check all that apply):

___ Amendment
___ New
X Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1240-04-12	Registration of Family Day Care Homes
Rule Number	**Rule Title**
1240-04-12-.01	Scope and Purpose
1240-04-12-.02	Definitions
1240-04-12-.03	Responsibilities of Department
1240-04-12-.04	Sponsoring Organization's Authority
1240-04-12-.05	Standards for Registered Family Day Care Providers

Chapter 1240-04-12
Registration of Family Day Care Homes

Repeal

Chapter 1240-04-12 Registration of Family Day Care Homes is repealed in its entirety, and the title is amended by deleting the previous title of the chapter and substituting instead the word "Repealed."

Authority: T.C.A. 4-5-201 et seq.; 71-3-501 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Human Services on October 31, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: October 31, 2018

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy, Programs and Services

Subscribed and sworn to before me on: October 31, 2018

Notary Public Signature: Jacqueline Griffin

My commission expires on:

JACQUELINE GRIFFIN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires SEPT. 7, 2021

Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): 1240-04-12

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

12/19/2018
Date

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Filed with the Department of State on: 1/8/19

Effective on: 4/8/19

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Uninsured Employers Fund Benefits
STATUTORY AUTHORITY:	Tennessee Code Annotated, § 50-6-801 et seq. establishes uninsured employers fund benefits to be paid by the bureau of workers' compensation to workers who are injured but their employer has no compensation coverage.
EFFECTIVE DATES:	April 2, 2019 through June 30, 2020
FISCAL IMPACT:	The overall effect will have little fiscal impact upon state or local government.
STAFF RULE ABSTRACT:	These rulemaking hearing rules establish the rules for uninsured employers fund benefits for workers' compensation claims in Tennessee.

NOTE: All language contained in the rule, as filed, is part of the new rule.

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.

PUBLIC COMMENTS AND RESPONSES:

No public comments were received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking 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.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules should not affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have a negative impact on consumers or small businesses.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

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)

These proposed rules will have little, if any, 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;

These rules establish the rules for uninsured employers fund benefits for workers' compensation claims in Tennessee.

(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;

T.C.A. § 50-6-801 et seq. establishes uninsured employers fund benefits to be paid by the bureau of workers' compensation to workers' who are injured but their employer has no compensation coverage.

(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;

Injured workers and employers who have no workers' compensation insurance coverage may be affected by the adoption or rejection of these rules.

(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;

The overall effect will have little fiscal impact upon state or local government.

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

Troy Haley, Director of Administrative Legal Services

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

Troy Haley, Director of Administrative Legal Services

(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:

Tennessee Bureau of Workers' Compensation 220 French Landing Drive, Floor 1-B Nashville, TN 37243 (615) 532-0179 troy.haley@tn.gov

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

None

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Sequence Number: 01-02-19
Rule ID(s): 8026
File Date: 1/2/19
Effective Date: 4/2/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
0800-02-30	Uninsured Employers Fund Benefits
Rule Number	**Rule Title**
0800-02-30-.01	Purpose and Scope of Rules
0800-02-30-.02	Definitions
0800-02-30-.03	General Requirements
0800-02-30-.04	Available Benefits
0800-02-30-.05	Requirements for Payment of Benefits
0800-02-30-.06	Investigation
0800-02-30-.07	Mediation
0800-02-30-.08	Court of Workers' Compensation Claims Processes
0800-02-30-.09	Payments from the Fund
0800-02-30-.10	Recovery from Employer

Rules of the
Bureau of Workers' Compensation

Chapter 0800-02-30
Uninsured Employers Fund Benefits
New Rules

0800-2-30-.01 Purpose and Scope of Rules

(1) The purpose of these rules is to establish the processes and procedures for administering the Uninsured Employers Fund in T.C.A. § 50-6-801 et seq.

(2) These procedures apply to all claims by eligible employees submitted to the Bureau of Workers' Compensation in accordance with T.C.A. § 50-6-801 et seq. The provisions of this chapter apply to all employers, adjusters and providers of services related to claims in the State of Tennessee subject to the Workers' Compensation Law.

Authority: T.C.A. §§ 50-6-801, 802, and 803.

0800-2-30.02 Definitions

(1) "Act": Tennessee Code Annotated, Title 50, Chapter 6.

(2) "Administrator": The same definition as in T.C.A § 50-6-102.

(3) "Bureau": The Tennessee Bureau of Workers' Compensation as defined in T.C.A. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only under T.C.A. § 4-3-1409.

(4) "Claim": A demand for something as due; or an assertion of a right or an alleged right.

(5) "Claimant": An individual who is claiming benefits under the Tennessee workers' compensation law.

(6) "Court": The Court of Workers' Compensation Claims.

(7) "Employee": The same definition as in T.C.A. § 50-6-102.

(8) "Employer": The same definition as in T.C.A. § 50-6-102.

(9) "Fund" and "UEF": The Uninsured Employers Fund established in T.C.A. § 50-6-801.

(10) "Mediator": A Bureau of Workers' Compensation employee who has received training in alternative dispute resolution, as described in T.C.A. § 50-6-236.

(11) "Ombudsman": A Bureau of Workers' Compensation employee who assists injured workers in resolving disputes and obtaining information available under the Tennessee workers' compensation law, as described in T.C.A. § 50-6-216.

(12) "Third Party Administrator": An organization that has contracted with the Bureau to handle administrative claims for benefits under the Uninsured Employers Fund benefit program.

Authority: T.C.A. §§ 4-3-1409, 50-6-102, 216, 236, 801, 802, 803.

0800-2-30-.03 General Requirements

An employee is eligible, subject to approval by the Bureau of Workers' Compensation Administrator, within the meaning provided by this section if: (1) The employee was employed by an uninsured employer; (2) The employee suffered an injury on or after July 1, 2015, arising primarily out of and in the course and scope of employment at a time when the employer was uninsured; (3) The employee was a Tennessee resident on the date of injury; (4) The employee notified the bureau of the injury and the employer's lack of insurance coverage no more than sixty (60)

days after the date of the injury; and (5) except as provided in § 50-6-802(d) and (e), the employee secured a judgment for workers' compensation benefits against the employer.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-2-30-.04 Available Benefits

(1) The following benefits are available to an eligible employee: temporary disability benefits up to $20,000.00; and medical benefits up to $20,000.00, to include a medical causation evaluation and mileage reimbursement if ordered by the Court of Workers' Compensation Claims.

(2) The maximum benefit is $40,000.00, including applicable mileage reimbursement and any medical causation evaluation.

(3) The cost of a medical causation evaluation may be paid by the Fund without an order from the Court of Workers' Compensation Claims.

(4) Reasonable mileage reimbursement may be paid to an eligible employee subject to applicable state employee maximums.

(5) All medical costs must be paid under the Medical Fee Schedule pursuant to Rules 0800-2-17, 0800-2-18 and 0800-2-19. The bureau shall have the authority to waive this requirement when necessary to provide treatment for an injured employee, as provided in T.C.A. § 50-6-204.

Authority: T.C.A. §§ 50-6-204, 205, 50-6-801, 802, 803.

0800-2-30-.05 Requirements for Payment of Benefits

(1) An Expedited Request for Investigation may be filed to confirm eligibility for benefits from the Uninsured Employers Fund.

(2) The Notice to the Uninsured Employer must be included on the petition for benefit determination and the cover letters to the dispute certification notices. The notice language informs the employer that benefits may be paid by the bureau and that the bureau will seek to collect the amount expended by the state from the employer under T.C.A. § 50-6-803.

(3) The Uninsured Employers Fund claims manager is the designated bureau employee who will interact between the bureau and the third-party administrator. A third-party administrator will be contracted to provide services and access to medical networks and to monitor billing compliance.

(4) The referral of the injured worker to obtain a medical causation opinion will take place in consultation with the Uninsured Employers Fund Benefits claims manager.

(5) Benefits will not be paid without a court order to support a lien against the employer.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-2-30.06 Investigation

(1) If the bureau receives information about a work injury involving an uninsured employer, an Expedited Request for Investigation is required.

(2) The bureau employee notified about the work injury and lack of insurance coverage will submit a completed Expedited Request for Investigation to uef.compliance@tn.gov and, if applicable, refer the injured worker to an ombudsman.

(3) The assigned Uninsured Employer's Fund compliance investigator will gather facts relating to eligibility in addition to conducting a standard investigation, and the compliance investigator will conduct and complete a report within ten (10) business days. The report must contain the four (4) major eligibility requirements.

(4) The investigation will use the same protocol as other investigations to work in conjunction with the mediator.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-2-30-.07 Mediation

(1) Upon assignment of a petition for benefit determination for an Uninsured Employers Fund claim, the bureau mediator will attempt to contact the employer and employee for voluntary mediation and will notify the Uninsured Employers Fund claims manager who will determine if the circumstances suggest a need for a medical causation opinion.

(2) If an alleged employer is unwilling to mediate or fails to respond to requests to mediate, the mediator must issue a dispute certification notice. The dispute certification notice must indicate the issues, the employee's eligibility for Uninsured Employers Fund benefits, temporary disability benefits and medical benefits. Under T.C.A. § 50-6-236, a dispute certification notice will also note an alleged employer who fails to cooperate with scheduling mediation.

(3) On agreement, the mediator must complete the Uninsured Employers Fund settlement agreement as prescribed by the Administrator and arrange for court approval of the agreement and the issuance of an agreed order with a judge in the proper jurisdiction.

(4) In the event of an impasse, the employee's eligibility for Uninsured Employers Fund benefits must be included as an issue on the dispute certification notice. In addition, the cover letter to the first and second dispute certification notices must include the petition for benefit determination notice language.

(5) The mediator must send the dispute certification notice or settlement agreement to the Uninsured Employers Fund benefit claim manager.

Authority: T.C.A. §§50-6-216, 236, 801, 802, 803.

0800-2-30-.08 Court of Workers' Compensation Claims Processes

(1) The Court of Workers' Compensation Claims will follow statutory guidelines, existing hearing procedures and protocol for expedited hearings and compensation hearings.

(2) The Court of Workers' Compensation Claims will consider the investigator's report and if applicable the medical causation report.

(3) The Court of Workers' Compensation Claims will make additional findings consistent with T.C.A. § 50-6-801(d) and include specific language in the order.

(4) If settled through mediation, the Court will conduct an approval hearing for the proposed settlement of interlocutory temporary disability and medical benefit issues. The Court may approve or deny the proposed settlement agreement.

(5) The UEF claims manager will receive the order and transmit it to the third-party administrator for servicing if approved by the Court of Workers' Compensation Claims.

Authority: T.C.A. §§ 50-6-239; 50-6-801, 802, 803.

0800-02-30-.09 Payments from the Fund

(1) Annually the bureau will contract with a third-party claim administrator to administer UEF claims. The third-party claim administrator will request, receive, and review medical records and medical bills and will submit recommendations to pay temporary disability benefits and medical benefits via a voucher to the claim administrator.

(2) Payments for temporary disability benefits and medical benefits will not be issued unless the bureau has on file: IRS form W-9 "Request for Taxpayer Identification Number and Certification;" an expedited hearing order; and a voucher from the claim administrator recommending payment to medical providers or injured workers or payment of attorney's fees, and child support liens.

(3) The bureau will establish the injured worker and each medical provider as a vendor in the state system for payments.

(4) The bureau will maintain financial records to document payments for contract services, total medical payments made per each injured worker, total disability benefits, monthly benefit payments and payments per fiscal year.

(5) Any costs associated with a third party administrator, along with any other administrative costs, shall be paid by the bureau administrator from the Fund.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-02-30-.10 Recovery from Employer

(1)The bureau administrator may pay from the Fund reasonable expenses of collection and enforcement, including filing fees and collection expenses incurred by the bureau. The administrator may recover these fees and expenses from employer.

(2)The bureau shall assume the rights of a creditor against an employer for money paid by the bureau administrator pursuant to statute or rule, and may place a lien on the assets of the employer by filing a notice of claim with the register of deeds of any county where the employer has assets. Upon filing the notice of claim with the appropriate official, the bureau shall be a secured creditor.

Authority: T.C.A. §§ 50-6-801, 802, 803.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on 11/2/18 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 August 21, 2018.

Rulemaking Hearing Conducted on October 16, 2018.

Date: 11/2/18

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

JANIE L. DORRIS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 3-8-2022

Subscribed and sworn to before me on: 11/2/18

Notary Public Signature: Janie L. Dorris

My commission expires on: March 8, 2022

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

Herbert H. Slatery III
Attorney General and Reporter

12/19/2018
Date

Department of State Use Only

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SECRETARY OF STATE
RULE FILINGS

Filed with the Department of State on: 1/2/19

Effective on: 4/2/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board for Licensing Health Care Facilities
SUBJECT:	Standards for Hospitals, Standards for Ambulatory Surgical Treatment Centers, Standards for Home Care Organizations Providing Home Medical Equipment, Standards for Home Care Organizations Providing Professional Support Services, and Licensing Procedures
STATUTORY AUTHORITY:	No federal or state law or regulation mandates the promulgation of the rule or establishes guidelines relevant thereto.
EFFECTIVE DATES:	April 7, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The amendment to Rule 1200-08-01 -.05(25) adds a new paragraph regarding "caregiver" requirements. The amendment to Rule 1200-08-10-. 06(13)(a) allows other experienced physicians, other than pain management specialists, to perform non-interventional pain procedures near the spine, for which they are trained. The amendment to Rule 1200-08-29-.01 (31) adds a definition for "Mail Order Company". The amendment to Rule 1200-08-29-.06(4)(a) corrects a typographical error. The amendment to Rule 1200-08-29-.06(4)(b) adds an exception for mail order companies under Equipment Management. The amendment to Rule 1200-08-29-. 11 (3)(a) adds an exception to in-home patient education and instruction for mail order companies. Lastly, the amendment to Rule 1200-08·34-.02(2)(b) adds a new subparagraph requiring a contract with DIDDs and that failure to maintain the contract may lead to discipline.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Mr. Jim Schmidt commented on behalf of Medtronic, Inc., on Rule 1200-08-10-.06.
Mr. Schmidt suggested that Rule 1200-08-10-.06 Basic Services be amended by deleting subparagraph (13)(a) in its entirety, creating a new part (13)(a)(6) and substituting instead the following language, so that as amended, the new subparagraphs and part shall read:

> (a) For purposes of interventional pain management, only a medical doctor, licensed pursuant to T.C.A. § 63-6-101 et seq., or an osteopathic physician, licensed pursuant to T.C.A. § 63-9-101 et seq., who meet the following qualifications will be permitted to perform invasive procedures of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine.
>
> 6. This section shall not apply to a medical doctor, licensed pursuant to T.C.A. § 63-6-101 et seq., or an osteopathic physician, licensed pursuant to T.C.A. § 63-9-101 et seq., in the placement of medical devices used in the treatment of conditions not primarily related to pain.

Ms. Tausha Alexander, commented on behalf of The Tennessee Association of Nurse Anesthetists (TANA), on Rule 1200-08-10-.06. TANA is a nonprofit association whose purpose is to advance the profession of nurse anesthesia, enhance the art and science of anesthesiology, and facilitate the provision of accessible, affordable, high quality care. Membership is limited to Certified Registered Nurse Anesthetists (CRNA) who are members of the American Association of Nurse Anesthetists (AANA). CRNAs are advanced practice nurses registered by the Tennessee Board of Nursing. Ms. Alexander seconded Mr. Schmidt's comments. Ms. Alexander stated that she had worked with Mr. Schmidt and the Tennessee Medical Association to come up with amenable language for all parties.

Dr. Rene Saunders asked why the language had to be changed.

Ms. Alexander responded that in 2011, a public chapter was passed which contained the language used in this rule. The legislation's purpose, at that time, was intended to impact chronic pain, not acute pain. CRNAs treat acute pain. The language as currently written without the suggested amendment will limit the practice of CRNAs working in ambulatory surgical centers in Tennessee. Ms. Alexander stated that chronic pain and acute pain are not defined, as the statute solely refers to the definition of "interventional pain management."

Dr. Saunders then asked if operative anesthesia treatment was the treatment of acute pain?

Ms. Alexander indicated it was not, as it was surgical anesthesia service. She indicated that a nerve block is the treatment of acute pain, but that a nerve block was not surgical anesthesia.

Danna Willis commented on behalf of TANA on Rule 1200-08-10-.06. Ms. Willis is a CRNA. She provided clarity on the scope of acute pain treatment provided by CRNAs. She indicated that CRNAs who are using nerve blocks provide treatment of pain prior to surgical intervention, thus, reducing the need for opioids after surgery. She indicated that this is an important treatment necessary in the opioid crisis.

Dr. Saunders then questioned the speakers as to why the language, as currently written, was a problem?

Tausha Alexander responded that as currently written, when placed in the ambulatory surgical treatment center rule will make ambulatory surgical treatment practices more restrictive than unlicensed facilities. The original law when put in place was to focus on unlicensed facilities. This law was written prior to the pain clinic statutes The proposed changes that she and Mr. Schmidt had presented to the Board provide restriction to physicians, but does not restrict CRNAs. Ms. Alexander seconded Mr. Schmidt's proposed rule changes. Ms. Alexander stated that she had worked with Mr. Schmidt and the Tennessee Medical Association to come up with amenable language for all parties.

The Board then asked their counsel, Caroline Tippens, if Mr. Schmidt and Ms. Alexander's changes were in line with the proposed rules. Ms. Tippens answered that the proposed changes were consistent and provided clarity to the suggested language.

The Tennessee Community Organization (TNCO) an organization for home care providers that provide service to patients receiving services under the Tennessee Department of Intellectual and Developmental Disabilities proposed changes to the Professional Support Services (PSS) rules 1200-08-34 for consideration and approval for rulemaking hearing by the Board. Representative for TNCO was Melanie Keller, Chair, TNCO Health Committee. She asked that the Board consider a rewrite of the entire chapter regarding personal support service agencies. She indicated that that some of the language was outdated.

Ms. Tippens responded that unfortunately, the scope of this rulemaking hearing was limited to the previously noticed section of rules governing personal support service agencies, which was 1200-08-34-.02. Ms. Tippens indicated that she would work with Ms. Keller to incorporate her changes on a chapter re-write for the personal support services agency rules.

Thereafter, the Board voted to accept the revised language proposed changes as proposed by Medtronic, TMA, and TANA.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rule amendments do not overlap, duplicate, or conflict with other federal, state, and local government rules.

(2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules amendments establish clarity, conciseness, and lack of ambiguity.

(3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rule amendments do not create any new compliance or reporting requirements.

(4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rule amendments do not create any new compliance or reporting requirements.

(5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rule amendments do not create any new compliance or reporting requirements.

(6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rule amendments do not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

(7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rule amendments do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board for Licensing Health Care Facilities

Rulemaking hearing date: June 6, 2018

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   These rules would directly affect hospitals, ambulatory surgical treatment centers, home care organizations providing professional support services and all companies currently offering or wishing to offer home medical equipment services by mail order.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   As a result of these rules, hospitals will be required to record the name of the patient's designated caregiver in the patient's record, but the costs associated with this rule should be minimal. The additional amendments should not have any impact on reporting or compliance requirements.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   Small businesses offering or wishing to offer home medical equipment services by mail order will benefit from these proposed rules. Tennessee consumers may also benefit from these proposed rules as more companies may apply to offer such services. The remaining rules should not directly affect business or consumers.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None.

   State: None.

6. **Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

   These rules do not provide for exemptions regarding small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial 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 amendment to Rule 1200-08-01-.05(25) adds a new paragraph regarding "caregiver" requirements.

The amendment to Rule 1200-08-10-.06(13)(a) allows other experienced physicians, other than pain management specialists, to perform non-interventional pain procedures near the spine, for which they are trained.

The amendment to Rule 1200-08-29-.01(31) adds a definition for "Mail Order Company"

The amendment to Rule 1200-08-29-.06(4)(a) corrects a typographical error.

The amendment to Rule 1200-08-29-.06(4)(b) adds an exception for mail order companies under Equipment Management.

The amendment to Rule 1200-08-29-.11(3)(a) adds an exception to in-home patient education and instruction for mail order companies

Lastly, the amendment to Rule 1200-08-34-.02(2)(b) adds a new subparagraph requiring a contract with DIDDs and that failure to maintain the contract may lead to discipline.

(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;

None.

(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 would directly affect hospitals, ambulatory surgical treatment centers, home care organizations providing professional support services and all companies currently offering or wishing to offer home medical equipment services by mail order.

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

These rules should not affect state or local government revenues or expenditures.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

(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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Caroline.Tippens@tn.gov.

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

None.

Department of State
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-12-19
Rule ID(s): 8109-8112
File Date: 1/7/19
Effective Date: 4/7/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Board for Licensing Health Care Facilities
Division:	
Contact Person:	Caroline Tippens, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Caroline.Tippens@tn.gov

Revision Type (check all that apply):
X Amendment
____ New
____ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-08-01	Standards for Hospitals
Rule Number	**Rule Title**
1200-08-01-.05	Admissions, Discharges, and Transfers

Chapter Number	**Chapter Title**
1200-08-10	Standards for Ambulatory Surgical Treatment Centers
Rule Number	**Rule Title**
1200-08-10-.06	Basic Services

Chapter Number	**Chapter Title**
1200-08-29	Standards for Home Care Organizations Providing Home Medical Equipment
Rule Number	**Rule Title**
1200-08-29-.01	Definitions
1200-08-29-.06	Basic Agency Functions
1200-08-29-.11	Records and Reports

Chapter Number	**Chapter Title**
1200-08-34	Standards for Home Care Organizations Providing Professional Support Services

Rule Number	Rule Title
1200-08-34-.02	Licensing Procedures

(Rule 1200-08-01-.04, continued)

It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

(b) The sign shall be printed in languages appropriate for the majority of clients of the hospital with lettering that is legible and that is Arial font, at least 40-point bold-faced type.

(c) A hospital in which abortions are performed that is not a private physician's office or ambulatory surgical treatment center shall post the required sign in the admissions or registration department used by patients on whom abortions are performed.

(d) A hospital shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars ($2,500.00) for each day of violation in which:

1. The sign required above was not posted during business hours when patients or prospective patients are present; and

2. An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the hospital.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-15-202, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendments filed February 22, 2010; effective May 23, 2010. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-01-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.

(Rule 1200-08-01-.05, continued)

(1) Every person admitted for care or treatment to any hospital covered by these rules shall be under the supervision of a physician who holds an unlimited license to practice in Tennessee. The name of the patient's attending physician shall be recorded in the patient's medical record.

(2) The above does not preclude the admission of a patient to a hospital by a dentist or podiatrist or certified nurse midwife licensed to practice in Tennessee with the concurrence of a physician member of the medical staff.

(3) This does not preclude qualified oral and maxillo-facial surgeons from admitting patients and completing the admission history and physical examination and assessing the medical risk of the procedure on their patients. A physician member of the medical staff is responsible for the management of medical problems.

(4) A diagnosis must be entered in the admission records of the hospital for every person admitted for care or treatment.

(5) Except in emergencies, no medication or treatment shall be given or administered to any patient in a hospital except on the order of a physician, dentist or podiatrist lawfully authorized to give such an order.

(6) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

(7) For purposes of this chapter, the requirements for signature or countersignature by a physician, dentist, podiatrist or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established hospital protocol or rules.

(Rule 1200-08-01-.05, continued)

(8) The hospital must ensure continuity of care and provide an effective discharge planning process that applies to all patients. The hospital's discharge planning process, including discharge policies and procedures, must be specified in writing and must:

(a) Be developed and/or supervised by a registered nurse, social worker or other appropriately qualified personnel;

(b) Begin upon admission of any patient who is likely to suffer adverse health consequences;

(c) Be provided when identified as a need by the patient, a person acting on the patient's behalf, or by the physician;

(d) Include the likelihood of a patient's capacity for self-care or the possibility of the patient returning to his or her pre-hospitalization environment;

(e) Identify the patient's continuing physical, emotional, housekeeping, transportation, social and other needs and must make arrangements to meet those needs;

(f) Be completed on a timely basis to allow for arrangement of post-hospital care and to avoid unnecessary delays in discharge;

(g) Involve the patient, the patient's family or individual acting on the patient's behalf, the attending physician, nursing and social work professionals and other appropriate staff, and must be documented in the patient's medical record; and

(h) Be conducted on an ongoing basis throughout the continuum of hospital care. Coordination of services may involve promoting communication to facilitate family support, social work, nursing care, consultation, referral or other follow-up.

(9) A discharge plan is required on every patient, even if the discharge is to home.

(Rule 1200-08-01-.05, continued)

(10) The hospital must arrange for the initial implementation of the patient's discharge plan and must reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan.

(11) As needed, the patient and family members or interested persons must be taught and/or counseled to prepare them for post-hospital care.

(12) The hospital must transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for follow-up or ancillary care.

(13) The governing body of each hospital must adopt transfer and acceptance policies and procedures in accordance with these rules and the provisions of T.C.A. §§ 68-11-701 through 68-11-705. These policies must include a review of all such involuntary transfers, with special emphasis on those originating in the emergency room.

(14) Transfer agreements with other health care facilities are subject to these statutory and regulatory provisions.

(15) When a hospital proceeding in compliance with these rules seeks to appropriately transfer a patient to another hospital, the proposed receiving hospital may not decline the transfer for reasons related to the patient's ability to pay or source of payment, rather than the patient's need for medical services. The determination of the availability of space at the receiving hospital may not be based on the patient's ability to pay or source of payment.

(16) Anyone arriving at a hospital and/or the emergency department of a hospital requesting or requiring an examination or treatment for a medical condition must be provided an appropriate medical screening examination within the capability of the hospital's staff to determine whether or not a medical emergency exists.

(Rule 1200-08-01-.05, continued)

(17) The hospital must provide further medical examination and treatment as may be required to stabilize the medical emergency within the hospital's available staff and facilities. Such treatment may include, but is not limited to, the following:

(a) Establishing and assuring an adequate airway and adequate ventilation;

(b) Initiating control of hemorrhage;

(c) Stabilizing and splinting the spine or fractures;

(d) Establishing and maintaining adequate access routes for fluid administration;

(e) Initiating adequate fluid and/or blood replacement; and

(f) Determining that the patient's vital signs (including blood pressure, pulse, respiration, and urinary output, if indicated) are sufficient to sustain adequate perfusion.

(18) A hospital is deemed to meet the requirements of this section with respect to an individual if:

(a) The hospital offers to provide the further medical examination and treatment necessary but the individual, or legally responsible person acting on the individual's behalf, refuses to consent to the examination or treatment; or

(b) The hospital offers to transfer the individual to another hospital in accordance with this section but the individual, or legally responsible person acting on the individual's behalf, refuses to consent to the transfer.

(19) If a patient at a hospital has not been or cannot be stabilized within the meaning of this section, the hospital may not transfer the patient unless:

(Rule 1200-08-01-.05, continued)

(a) The patient, or legally responsible person acting on the patient's behalf, requests that a transfer be implemented after having been given complete and accurate information about matters pertaining to the transfer decision including:

1. The medical necessity of the movement;

2. The availability of appropriate medical services at both the transferring and receiving hospitals;

3. The availability of indigent care at the hospital initiating the transfer and the facility's legal obligations, if any, to provide medical services without regard to the patient's ability to pay; and,

4. Any obligation of the hospital through its participation in medical assistance programs of the federal, state or local government to accept the medical assistance program's reimbursement as payment in full for the needed medical care.

(b) A physician, or other appropriately qualified medical personnel when a physician is not available, makes a determination based upon the reasonable risk, expected benefits to the patient, and current available information that the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risk to the individual's medical condition resulting from a transfer; and

(c) The transfer is appropriate within the meaning of this section.

(20) An appropriate transfer includes:

(a) A physician at the receiving hospital agreeing to accept transfer of the patient and to provide appropriate medical treatment;

(Rule 1200-08-01-.05, continued)

(b) The receiving hospital having space available and personnel qualified to treat the patient;

(c) The transferring hospital providing the receiving hospital with appropriate medical records, or copies thereof, of any examination and/or treatment initiated by the transferring hospital; and

(d) The transfer being effected with qualified personnel, appropriate transportation equipment, and the use of necessary and medically appropriate life support measures as required.

(21) Transfers made pursuant to a regionalized plan for the delivery of health care services, approved by the department or other authorized governmental planning agency, are presumed to be appropriate.

(22) After an appropriate transfer has been effected, the receiving hospital may transfer the patient back to the original hospital, and the original hospital may accept the patient, if:

(a) The original receiving hospital has stabilized the medical emergency or provided treatment of the active labor and the patient no longer has a medical emergency; and

(b) The transfer is made in accordance with (21) of this section.

(23) When a hospital determines the need to exceed its licensed bed capacity upon an occurrence of a justified emergency, the following procedures must be followed:

(a) The hospital's administrator must make written notification to the Department within forty-eight (48) hours of exceeding its licensed bed capacity.

(b) The notification must include a detailed description of the emergency including:

(Rule 1200-08-01-.05, continued)

1. Why the licensed bed capacity was exceeded, i.e., lack of hospital beds in vicinity, specialized resources only available at the facility, etc.;

2. The estimated length of time the licensed bed capacity is expected to be exceeded; and,

3. The number of admissions in excess of the facility's licensed bed capacity.

(c) As soon as the hospital returns to its licensed bed capacity, the administrator must notify the department in writing of the effective date of its return to compliance.

(d) Staff will review all notifications of excess bed capacity with the Chairman of the Board. If, upon review of the notification, department staff concurs that a justified emergency existed, staff will notify the facility in writing. A report of the occurrence will be made to the board at the next regularly scheduled meeting as information purposes only.

(e) However, if department staff does not concur that a justified emergency existed, the facility will be notified in writing that a representative is required to appear at the next regularly scheduled board meeting to justify the need for exceeding its licensed bed capacity.

(24) Infant Abandonment.

(a) Any hospital shall receive possession of any newborn infant left on hospital premises with any hospital employee or member of the professional medical community, if the infant:

1. Was born within the preceding seventy-two (72) hour period, as determined within a reasonable degree of medical certainty;

(Rule 1200-08-01-.05, continued)

2. Is left in an unharmed condition; and

3. Is voluntarily left by a person who purported to be the child's mother and who did not express an intention of returning for the infant.

(b) The hospital, any hospital employee and any member of the professional medical community at such hospital shall inquire whenever possible about the medical history of the mother or newborn and whenever possible shall seek the identity of the mother, infant, or the father of the infant. The hospital shall also inform the mother that she is not required to respond, but that such information will facilitate the adoption of the child. Any information obtained concerning the identity of the mother, infant or other parent shall be kept confidential and may only be disclosed to the Department of Children's Services. The hospital may provide the parent contact information regarding relevant social service agencies, shall provide the mother the name, address and phone number of the department contact person, and shall encourage the mother to involve the Department of Children's Services in the relinquishment of the infant. If practicable, the hospital shall also provide the mother with both orally delivered and written information concerning the requirements of these rules relating to recovery of the child and abandonment of the child.

(c) The hospital, any hospital employee and any member of the professional medical community at such hospital shall perform any act necessary to protect the physical health or safety of the child.

(d) As soon as reasonably possible, and no later than twenty-four (24) hours after receiving a newborn infant, the hospital shall contact the Department of Children's Services, but shall not do so before the mother leaves the hospital premises. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.

(e) Notwithstanding any provision of law to the contrary, any hospital, any hospital employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of these rules, and no lawsuit shall be predicated thereon; provided, however, that nothing in these rules shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause

(Rule 1200-08-01-.05, continued)

of action based upon violation of such existing standard of care for medical treatment.

(25) Caregiver

(a) The hospital shall give a patient admitted to the hospital the opportunity to designate a caregiver who will assist the patient with continuing care after discharge from the hospital.

1. Caregiver means any individual designated as a caregiver by a patient who provides after-care assistance to a patient in a private residence.. The term includes, but is not limited to, a relative, spouse, partner, friend or neighbor who has a significant relationship with the patient.

2. The hospital shall document the designated caregiver in the patient record and include contact information; and

3. If the patient declines to designate a caregiver, the hospital shall document the patient's choice in the medical record.

(b) The hospital shall notify the designated caregiver as soon as practicable before the patient is discharged back to a private residence.

(c) If the hospital is unable to contact the designated caregiver when changes occur, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient or the transfer or discharge of the patient. Nothing in this paragraph shall interfere with, delay or otherwise affect the medical care provided to the patient or the transfer or discharge of the patient.

(d) The hospital shall make reasonable efforts to contact the designated caregiver and document those efforts in the patient record, to include dates and times attempted.

(e) The patient may give written consent to allow the hospital to release medical information to the designated caregiver, pursuant to the hospital's established procedures for the release of personal health information.

(f) Prior to the patient being discharged, the hospital shall provide discharge instructions for continuing care needs to the patient and designated caregiver, which shall include:

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1. The name and contact information of the designated caregiver and relation to the patient;

2. A description of continuing care tasks that the patient requires, communicated in a culturally competent manner; and

3. Contact information for any health care, community resources, and long-term services and supports necessary to successfully carry out the patient's discharge instructions.

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(Rule 1200-08-01-.05, continued)

(g) Prior to the patient being discharged, the hospital shall provide the designated caregiver with an opportunity for instruction in continuing care tasks outlined in the discharge instructions, which shall include:

1. Demonstration of the continuing care tasks by hospital personnel; and

2. Opportunity for the patient and designated caregiver to ask questions and receive answers regarding the continuing care tasks; and

3. Education and counseling about medications, including dosing and proper use of delivery devices.

(h) The hospital shall document the instruction given to the patient and designated caregiver in the patient record, to include the date, time and contents of the instructions.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, and 68-11-255.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002.*

1200-08-01-.06 BASIC HOSPITAL FUNCTIONS.

(1) Performance Improvement.

(a) The hospital must ensure that there is an effective, hospital-wide performance improvement program to evaluate and continually improve patient care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services including services furnished by a contractor, are evaluated (all departments including engineering, housekeeping, and accounting need to show evidence of process improvement.);

2. Nosocomial infections and medication therapy are evaluated;

(Rule 1200-08-10-.05, continued)

(12) As needed, the patient and family members or interested persons must be taught and/or counseled to prepare them for post-operative care.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003.*

1200-08-10-.06 BASIC SERVICES.

(1) Surgical Services.

(a) Facilities restricted in services they provide, e.g. those that restrict services to radiation therapy or use of local anesthetics only, may be exempted from all or part of the requirements of this rule pertaining to laboratory services, food and dietetic services, surgical services, and anesthesia services.

(b) If the facility provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(c) A hospital may choose to separately license a portion of the facility as an Ambulatory Surgical Treatment Center; the licensure fee for such is not required.

(d) The organization of the surgical services must be appropriate to the scope of the services offered.

(e) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

(Rule 1200-08-10-.06, continued)

(f) An ASTC may use scrub nurses in its operating rooms. For the purposes of this rule, a "scrub nurse" is defined as a registered nurse or either a licensed practical nurse (L.P.N.) or a surgical technologist (operating room technician) supervised by a registered nurse who works directly with a surgeon within the sterile field, passing instruments, sponges, and other items needed during the procedure and who scrubs his or her hands and arms with special disinfecting soap and wears surgical gowns, caps, eyewear, and gloves, when appropriate.

(g) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable State laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

(h) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(i) Surgical services must be consistent with needs and resources. Policies covering surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(j) Surgical technologists must:

1. Hold current national certification established by the Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

2. Have completed a program for surgical technology accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

(Rule 1200-08-10-.06, continued)

3. Have completed an appropriate training program for surgical technologists in the armed forces or at a CAAHEP accredited hospital or CAAHEP accredited ambulatory surgical treatment center; or

4. Successfully complete the surgical technologists LCC-ST certifying exam; or

5. Provide sufficient evidence that, prior to May 21, 2007, the person was at any time employed as a surgical technologist for not less than eighteen (18) months in the three (3) years preceding May 21, 2007 in a hospital, medical office, surgery center, or an accredited school of surgical technology; or has begun the appropriate training to be a surgical technologist prior to May 21, 2007, provided that such training is completed within three (3) years of May 21, 2007.

(k) An ASTC can petition the director of health care facilities of the department for a waiver from the provisions of 1200-08-10-.06(1)(j) if they are unable to employ a sufficient number of surgical technologists who meet the requirements. The facility shall demonstrate to the director that a diligent and thorough effort has been made to employ surgical technologist who meet the requirements. The director shall refuse to grant a waiver upon finding that a diligent and thorough effort has not been made. A waiver shall exempt a facility from meeting the requirements for not more than nine (9) months. Additional waivers may be granted, but all exemptions greater than twelve (12) months shall be approved by the Board for Licensing Health Care Facilities.

(l) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal. Persons qualified to be employed as surgical technologists shall complete fifteen (15) hours of continuing education or contact hours annually. Current certification by the National Board of Surgical Technology and Surgical Assisting shall satisfy this requirement.

(m) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If the history has been dictated, but not yet

(Rule 1200-08-10-.06, continued)

recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.

(n) Properly executed informed consent, advance directive, if available, and organ donation forms, if available, must be in the patient's chart before surgery, except in emergencies. The patient is not required to sign advance directive and organ donation forms.

(o) Adequate equipment and supplies must be available as determined by the governing body and the medical staff, and must meet the current acceptable standards of practice in the ASTC industry. In conjunction with their governing body and the medical staff, the facility shall develop policies and procedures specifying the types of emergency equipment that are appropriate for the facility's patient population, and shall make the items immediately available at the ASTC to handle inter- or post-operative emergencies.

(p) At least one registered nurse shall be in the recovery area during the patient's recovery period.

(q) The operating room register must be complete and up-to-date.

(r) An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

(s) The ASTC shall provide one or more surgical suites which shall be constructed, equipped, and maintained to assure the safety of patients and personnel.

(t) Surgical suites are required to meet the same standards as hospital operating rooms, including those using general anesthesia.

(u) The ASTC shall have separate areas for waiting rooms, recovery rooms, treatment and/or examining rooms.

(Rule 1200-08-10-.06, continued)

(2) Anesthesiology Services. Anesthesia shall be administered by:

(a) A qualified anesthesiologist;

(b) A doctor of medicine or osteopathy (other than an anesthesiologist);

(c) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

(d) A certified registered nurse anesthetist (CRNA); or

(e) A graduate registered nurse anesthetist under the supervision of an anesthesiologist who is immediately available if needed.

(f) After the completion of anesthesia, patients shall be constantly attended by competent personnel until responsive and able to summon aid. Each center shall maintain a log of the inspections made prior to each day's use of the anesthesia equipment. A record of all service and maintenance performed on all anesthesia machines, vaporizers and ventilators shall also be on file.

(g) When inhaled general anesthesia known to trigger malignant hyperthermia and/or succinylcholine are maintained in the facility, there shall be thirty-six (36) ampules of Dantrolene for injection onsite. This requirement applies to anesthesia agents, current or future, that are shown to cause malignant hyperthermia. If Dantrolene is administered, appropriate monitoring must be provided post-operatively.

(h) Written policies and procedures relative to the administration of anesthesia shall be developed and approved by the Medical Staff and governing body.

(Rule 1200-08-10-.06, continued)

(i) Any patient receiving conscious sedation shall receive:

1. continuous EKG monitoring;

2. continuous oxygen saturations;

3. serial BP monitoring at intervals no less than every 5 minutes; and

4. supplemental oxygen therapy and immediately available:

(i) ambubag;

(ii) suction;

(iii) endotracheal tube; and

(iv) crash cart.

(3) Medical Staff.

(a) The ASTC shall have a medical staff organized under written by-laws that are approved by the governing body. The medical staff of the ASTC shall define a mechanism to:

1. Assure that an optimal level of professional performance is maintained;

2. Appoint independent practitioners through a defined credentialing process;

(Rule 1200-08-10-.06, continued)

3. Apply credentialing criteria uniformly;

4. Utilize the current license, relevant training and experience, current competence and the ability to perform requested privileges in the credentialing process; and

5. Provide for participation in required committees of the facility to ensure that quality medical care is provided to the patients.

(b) Each licensed independent practitioner shall provide care under the auspices of the facility in accordance with approved privileges.

(c) Clinical privileges shall be granted based on the practitioners' qualifications and the services provided by the facility, and shall be reviewed and/or revised at least every two (2) years.

(4) Nursing Service. A licensed registered nurse (R.N.) shall be on duty at all times. Additional appropriately trained staff shall be provided as needed to ensure that the medical needs of the patients are fully met.

(a) The ASTC shall be organized under written policies and procedures relating to patient care, establishment of standards for nursing care and mechanisms for evaluating such care and nursing services.

(b) A qualified registered nurse designated by the administrator shall be responsible for coordinating and supervising all nursing services.

(c) There shall be a sufficient staffing pattern of registered nurses to provide quality nursing care to each surgical patient from admission through discharge. Additional

(Rule 1200-08-10-.06, continued)

staff shall be on duty and available to assist the professional staff to adequately handle routine and emergency patient needs.

(d) The ASTC shall establish written procedures for emergency services which will ensure that professional staff members who have been trained in emergency resuscitation procedures shall be on duty at all times when there is a patient in the ASTC and until the patient has been discharged.

(e) Nursing care policies and procedures shall be consistent with professionally recognized standards of nursing practice and shall be in accordance with the Nurse Practice Act of the State of Tennessee and the Association of Operating Room Nurses Standards of Practice.

(f) Staff development and training shall be provided to the nursing staff and other ancillary staff in order to maintain and improve knowledge and skills. The educational/training program shall be planned, documented and conducted on a continuing basis. There shall be at least appropriate training on equipment, safety concerns, infection control and emergency care on an annual basis.

(5) Pharmaceutical Services. The ASTC must provide drugs and biologicals in a safe and effective manner in accordance with accepted standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times.

(6) Ancillary Services. All ancillary or supportive health or medical services, including but not limited to, radiological, pharmaceutical, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.

(7) Radiological Services. The ASTC shall provide within the facility, or through arrangement, diagnostic radiological services commensurate with the needs of the ambulatory surgical treatment center.

(Rule 1200-08-10-.06, continued)

(a) If radiological services are provided by facility staff, the services shall be maintained free of hazards for patients and personnel.

(b) New installations of radiological equipment, and subsequent inspections for the identification of radiation hazards shall be made as specified in state and federal requirements.

(c) Personnel monitoring shall be maintained for each individual working in the area of radiation. Readings shall be on at least a monthly basis and reports kept on file and available for review.

1. Personnel - The ASTC shall have a radiologist either full-time or part-time on a consulting basis, both to supervise the service and to discharge professional radiological services.

2. The use of all radiological apparatus shall be limited to personnel designated as qualified by the radiologist; and use of fluoroscopes shall be limited to physicians.

(d) If provided under arrangement with an outside provider, the radiological services must be directed by a qualified radiologist and meet state and federal requirements.

(8) Laboratory Services.

(a) The ASTC shall provide on the premises or by written agreement with a laboratory licensed under T.C.A. § 68-29-105, a clinical laboratory to provide those services commensurate with the needs and services of the ASTC.

(b) Any patient terminating pregnancy in an ASTC shall have an Rh type, documented prior to the procedure, performed on her blood. In addition, she shall be given the opportunity to receive Rh immune globulin after an appropriate crossmatch procedure is performed within a licensed laboratory.

(Rule 1200-08-10-.06, continued)

(9) Food and Dietetic Services. If a patient will be in the facility for more than four (4) hours post-op, an appropriate diet shall be provided.

(10) Environmental Services.

(a) The facility shall provide a safe, accessible, effective and efficient environment of care consistent with its mission, service, law and regulation.

(b) The facility shall develop policies and procedures that address:

1. Safety;

2. Security;

3. Control of hazardous materials and waste;

4. Emergency preparedness;

5. Life safety;

6. Medical equipment; and,

7. Utility systems.

(c) Staff shall have been oriented to and educated about the environment of care and possess knowledge and skills to perform responsibilities under the environment of care policies and procedures.

(Rule 1200-08-10-.06, continued)

(d) Utility systems, medical equipment, life safety elements, and safety elements of the environment of care shall be maintained, tested and inspected.

(e) Safety issues shall be addressed and resolved.

(f) Appropriate staff shall participate in implementing safety recommendations and monitoring their effectiveness.

(g) The building and grounds shall be suitable to services provided and patients served.

(11) Infection Control. An Ambulatory Surgical Treatment Center shall have an annual influenza vaccination program which shall include at least:

(a) The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Ambulatory Surgical Treatment Center will encourage all staff and independent practitioners to obtain an influenza vaccination;

(b) A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

(c) Education of all employees about the following:

1. Flu vaccination,

2. Non-vaccine control measures, and

(Rule 1200-08-10-.06, continued)

3. The diagnosis, transmission, and potential impact of influenza;

(d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and

(e) A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

(12) Medical Records.

(a) The ASTC shall comply with the Medical Records Act of 1974, T.C.A. § 68-11-301, et seq.

(b) A medical record shall be maintained for each person receiving medical care provided by the ASTC and shall include:

1. Patient identification;

2. Name of nearest relative or other responsible agent;

3. Identification of primary source of medical care;

4. Dates and times of visits;

5. Signed informed consent;

6. Pertinent medical history;

(Rule 1200-08-10-.06, continued)

7. Diagnosis;

8. Physician examination report;

9. Anesthesia records of pertinent preoperative and postoperative reports including preanesthesia evaluation, type of anesthesia, technique and dosage used;

10. Operative report;

11. Discharge summary, including instructions for self care and instructions for obtaining postoperative emergency care;

12. Reports of all laboratory and diagnostic procedures along with tests performed and the results authenticated by the appropriate personnel; and,

13. X-ray reports.

(c) Medical records shall be current and confidential. Medical records and copies thereof shall be made available when requested by an authorized representative of the board or the department.

(13) Invasive Procedures

~~(a) Only a medical doctor, licensed pursuant to T.C.A. § 63-6-101 et seq., or an osteopathic physician, licensed pursuant to T.C.A. § 63-9-101 et seq., who meet the following qualifications will be permitted to perform invasive procedures of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine:~~

(Rule 1200-08-10-.06, continued)

(a) For purposes of interventional pain management, only a medical doctor, licensed pursuant to T.C.A. § 63-6-101 et seq., or an osteopathic physician, licensed pursuant to T.C.A. § 63-9-101 et seq., who meets the following qualifications will be permitted to perform invasive procedures of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine.

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1. Board certified through the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

   (i) Anesthesiology;

   (ii) Neurological surgery, or Neuromusculoskeletal medicine;

   (iii) Orthopedic surgery;

   (iv) Physical medicine and rehabilitation;

   (v) Radiology; or

   (vi) Any other board certified physician who had completed an ABMS subspecialty board in pain medicine or completed an ACGME accredited pain fellowship;

2. A recent graduate in a medical specialty listed in part 1 not yet eligible to apply for ABMS, AOA, or ABPS/AAPS board certification; provided, there is a practice relationship with a medical doctor or an osteopathic physician who meets the requirements of part 1.;

(Rule 1200-08-10-.06, continued)

3. A licensee who is not board certified in one of the specialties listed in part 1, but is board certified in a different ABMS, AOA, or ABPS/AAPS specialty and has completed a post-graduate training program in interventional pain management approved by the board;

4. A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

5. A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the Commission on Accreditation of Rehabilitation Facilities or any successor organizations.

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6. This subparagraph (13)(a) shall not apply to a medical doctor, licensed pursuant to T.C.A. § 63-6-101 et seq., or an osteopathic physician, licensed pursuant to T.C.A. § 63-9-101 et seq., in the placement of medical devices used in the treatment of conditions not primarily related to pain.

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(b) An advanced practice nurse or physician assistant shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine under the direct supervision of a medical doctor or an osteopathic physician who meets the qualifications of Rule 1200-08-10-.06 (12)(a)1 or 3. Direct supervision is defined as being physically present in the center at the time the invasive procedure is performed.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68, 68-11-209, 68-11-216, 68-57-101, 68-57-102, 68-57-104, and 68-57-105.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed September 10, 1991; effective October 25, 1991. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed December 16, 2013; effective March 16, 2014.*

(Rule 1200-08-10-.06, continued)

Amendments filed March 27, 2015; effective June 25, 2015. Amendment filed October 20, 2015; effective January 18, 2016. Amendments filed July 18, 2016; effective October 16, 2016.

1200-08-10-.07 RESERVED.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-57-105.* ***Administrative History:*** *Original rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 4, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed January 3, 2012; effective April 2, 2012.*

1200-08-10-.08 BUILDING STANDARDS.

(1) An ASTC shall construct, arrange, and maintain the condition of the physical plant and the overall ASTC environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

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RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-29
STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT

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1200-08-29-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. A person who:

(a) Is a licensed physician with at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs; or

(b) Is a registered nurse with at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs; or

(c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.

(Rule 1200-08-29-.01, continued)

(3) Advance Directive. A written statement such as a living will, a durable power of attorney for health care or a do not resuscitate order relating to the provision of health care when the individual is incapacitated.

(4) Agency. A Home Care Organization providing home medical equipment.

(5) Assistive Technology Practitioner (ATP). Service providers primarily involved in evaluating the consumer's needs and training in the use of a prescribed wheeled mobility device.

(6) Assistive Technology Supplier (ATS). Service providers involved in the sale and service of commercially available wheeled mobility devices.

(7) Board. The Tennessee Board for Licensing Health Care Facilities.

(8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) Clinical Note. A written and dated notation containing a patient assessment, responses to medications, treatments, services, any changes in condition and signed by a health team member who made contact with the patient.

(10) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(11) Competent. For the purpose of this chapter only, a patient who has decision-making capacity.

(Rule 1200-08-29-.01, continued)

(12) Decision-making capacity. Decision-making capacity is shown by the fact that the person is able to understand the proposed procedure, its risks and benefits, and the available alternative procedures.

(13) Department. The Tennessee Department of Health.

(14) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(15) Evaluation. The determination and documentation of the physiological and functional factors that impact the selection of an appropriate seating and wheeled mobility device.

(16) Hazardous Waste. Materials whose handling, use, storage and disposal are governed by local, state or federal regulations.

(17) Health care decision. A decision made by an individual or the individual's health care decision-maker, regarding the individual's health care including but not limited to:

(a) the selection and discharge of health-care providers and institutions;

(b) approval or disapproval of diagnostic tests, surgical procedures, programs of administration of medication, and orders not to resuscitate;

(c) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and

(d) transfer to other health care facilities.

(18) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following:

(Rule 1200-08-29-.01, continued)

the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-08-29-.13 or T.C.A. §33-3-220.

(19) Home Care Organization. As defined by T.C.A. § 68-11-201, a "home care organization" provides home health services, home medical equipment services or hospice services to patients on an outpatient basis in either their regular or temporary place of residence.

(20) Home Medical Equipment.

(a) Medical equipment intended for use by the consumer including, but not limited to the following:

1. A device, instrument, apparatus, machine, or other similar article whose label bears the statement: "Caution: Federal law requires dispensing by or on the order of a physician.";

2. Ambulating assistance equipment;

3. Mobility equipment;

4. Rehabilitation seating;

5. Oxygen care equipment and oxygen delivery systems;

6. Respiratory care equipment and respiratory disease management devices.

7. Rehabilitation environmental control equipment;

(Rule 1200-08-29-.01, continued)

8. Ventilators;

9. Apnea monitors;

10. Diagnostic equipment;

11. Feeding pumps;

12. A bed prescribed by a physician to treat or alleviate a medical condition;

13. Transcutaneous electrical nerve stimulator;

14. Sequential compression devices; and

15. Neonatal home phototherapy devices.

(b) Home medical equipment does not include:

1. Medical equipment used or dispensed in the normal course of treating patients by hospitals and nursing facilities as defied in this part, other than medical equipment delivered or dispensed by a separate unit or subsidiary corporation of a hospital or nursing facility or agency that is in the business of delivering home medical equipment to an individual's residence;

2. Upper and lower extremity prosthetics and related orthotics;

3. Canes, crutches, walkers, and bathtub grab bars;

(Rule 1200-08-29-.01, continued)

4. Medical equipment provided through a physician's office incident to a physician's service;

5. Equipment provided by a pharmacist which is used to administer drugs or medicine that can be dispensed only by a pharmacist; or

6. Enteral and parenteral equipment provided by a pharmacist.

(21) Home medical equipment provider. Any person who provides home medical equipment services.

(22) Home medical equipment services. A service provided by any person who sells or rents home medical equipment for delivery to the consumer' place of residence in this state, regardless of the location of the home medical equipment provider.

(23) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(24) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(25) Lacks Decision-Making Capacity. Lacks Decision-Making Capacity means the factual demonstration by the attending physician and the medical director, or the attending physician and another physician that an individual is unable to understand:

(a) A proposed health care procedure(s), treatment(s), intervention(s), or interaction(s);

(b) The risks and benefits of such procedure(s), treatment(s), intervention(s) or interaction(s); and

(Rule 1200-08-29-.01, continued)

(c) The risks and benefits of any available alternative(s) to the proposed procedure(s), treatment(s), intervention(s) or interaction(s).

(26) Legal Conservator. Any person authorized to act for the patient pursuant to any provision of T.C.A. Title 34, Chapters 5 and 11 through 13.

(27) Legal Guardian. Any person authorized to act for the resident pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.

(28) Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(29) Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(30) Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

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(31) Mail Order Company. A company which lists its products for consumers to buy, rent or lease via telephone, mailed check with order form, or Internet order and delivers such products directly to the consumer via a postal service, such as the U.S. Postal Service (USPS), UPS, FedEx or another courier service; provided, however, that a company that supplies respiratory care and oxygen equipment or any other home medical equipment necessary to avert an immediate threat to a consumer's health or safety, without which a consumer might be required to seek emergency medical treatment, shall not be considered to be a mail order company for purposes of this rule.

(~~31~~32) Medical Record. Information that pertains to confinement or services rendered to patients, including one or more of the following:

(a) medical histories;

(Rule 1200-08-29-.01, continued)

(b) records;

(c) reports;

(d) clinical notes;

(e) summaries; or

(f) orders.

If the patient does not require any clinical services from the home medical equipment company, the medical record will consist of the physician order only.

(~~32~~33) Medical Futile Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the surrogate expresses the goals of the patient.

(~~33~~34) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(~~34~~35) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(Rule 1200-08-29-.01, continued)

(~~35~~36) Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

(~~36~~37) Physician. A person currently licensed as such by the Tennessee Board of Medical Examiners or currently licensed by the Tennessee Board of Osteopathic Examination. For the purpose of this chapter only, a physician who is licensed to practice medicine or osteopathy in a state contiguous to Tennessee, who have previously provided treatment to the patient and has an ongoing physician-patient relationship with the patient for whom a referral is to be made, may refer a patient residing in this state to a home care organization providing hospice services duly licensed under this chapter. This shall not be construed as authorizing an unlicensed physician to practice medicine in violation of T.C.A. §§ 63-6-201 or 63-9-104.

(~~37~~38) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(~~38~~39) Qualified Rehabilitation Professional. A health care professional with in the professional's scope of practice licensed under Title 63; or an individual who has appropriately obtained the designation of ATS or ATP, meeting all requirements thereof, as established by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

(~~39~~40) Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(~~40~~41) Shall or Must. Compliance is mandatory.

(~~41~~42) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(Rule 1200-08-29-.01, continued)

(~~42~~43) Surrogate. The patient's conservator, or if none, a competent adult most likely to know the wishes of the patient with respect to the possible withholding of resuscitative services or withdrawal of resuscitative services.

(~~43~~44) Wheeled Mobility Device. A wheelchair or wheelchair and seated positioning system prescribed by a physician and required for use by the patient for a period of six (6) months or more. The following Medicare wheelchairs base codes are exempt: K0001, K0002, K0003, K0004, K0006, and K0007 as long as the consumer weighs less than three hundred (300) pounds.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-226, 68-11-268, and 68-11-303.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed May 27, 2004; effective August 10, 2004. Amendment filed June 25, 2007; effective September 8, 2007. Amendment filed October 11, 2007; effective December 25, 2007. Amendments filed December 23, 2009; effective March 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-29-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home care organization providing home medical equipment without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure. The name of the home care organization providing home medical equipment shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home care organization providing home medical equipment.

(2) In order to make application for a license:

(2) Patients shall be transferred or referred to other organizations/agencies in the community when service needs are identified by staff or patients which cannot be met by the agency.

(3) The agency shall ensure that no person, on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of patients under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed June 25, 2007; effective September 8, 2007.*

1200-08-29-.06 BASIC AGENCY FUNCTIONS.

(1) Patient Instruction. The agency shall have written guidelines relating to patient and/or caregiver training and education that includes at a minimum:

(a) Financial responsibilities;

(b) Equipment use and maintenance;

(c) Patient rights and responsibilities;

(d) Emergency/back-up systems and trouble shooting procedures, if applicable; and

(e) How to contact the agency during regular business hours and after hours, if applicable.

(2) Infection Control. The agency shall have written policies and procedures relating to infection control. Employees shall consistently follow infection control procedures in the

(Rule 1200-08-29-.06, continued)

provision of care to the agency's patients. The written policies and procedures at a minimum must address standards and education of staff about:

(a) Infection control measures;

(b) Handwashing;

(c) Use of universal precautions and personal protective equipment;

(d) Appropriate cleaning and disinfection of reusable equipment and supplies; and,

(e) Disposal of regulated waste.

(f) A Home Care Organization Providing Home Medical Equipment shall have an annual influenza vaccination program which shall include at least:

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Home Care Organization Providing Home Medical Equipment will encourage all staff and independent practitioners to obtain an influenza vaccination;

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

3. Education of all employees about the following:

(i) Flu vaccination,

(Rule 1200-08-29-.06, continued)

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

(3) In-Home Safety. The agency shall educate staff, patients, and caregivers about basic home safety related to the use of equipment delivered to the home. There shall be a procedure for reporting and documenting all incidents. There shall be an incident report form and identification of the types of situations that should be reported and documented.

(4) Equipment Management.

~~(a) Client-ready equipment shall be durable in nature, sanitized, and in proper working order. The agencyzation shall have clearly defined guidelines for the cleaning, storage, and transportation of client-ready equipment. These guidelines shall include, but are not limited to:~~

(a) Client-ready equipment shall be durable in nature, sanitized, and in proper working order. The agency shall have clearly defined guidelines for the cleaning, storage, and transportation of client-ready equipment. These guidelines shall include, but are not limited to:

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1. Separation of clean and unclean equipment;

2. Appropriate warehousing and tagging of equipment;

(Rule 1200-08-29-.06, continued)

3. Use of appropriate cleaning agents, as directed by the manufacturer;

4. Routine maintenance of equipment; and

5. Separation of inoperative equipment.

~~(b) Agency employees shall be qualified to deliver, perform environmental assessments, set up, and demonstrate safe and proper use of all home medical equipment according to manufacturer's guidelines.~~

(b) Except for mail order companies, agency employees shall be qualified to deliver, perform environmental assessments, set up, and demonstrate safe and proper use of all home medical equipment according to manufacturer's guidelines.

(c) Agency guidelines shall clearly define training, qualifications, and skills validation required by employees to perform routine maintenance and repairs of all home medical equipment. Routine maintenance, preventive maintenance, and repairs shall be performed according to manufacturer's guidelines. Agency employees shall only perform repair services within their respective areas of documented training and expertise. There shall be guidelines that define appropriate use of outside repair sources.

(d) The agency shall have written guidelines for accurate performance quality tracking of equipment in compliance with the FDA's Medical Device Tracking program and facilitate any recall notices sent by the manufacturer. These guidelines shall address the:

1. Immediate removal from equipment inventory;

2. Notification to the client; and

(Rule 1200-08-29-.06, continued)

3. Exchange of equipment in the field.

(e) Disposition of recalled inventory shall be handled according to manufacturer's guidelines.

(f) Only durable medical equipment shall be returned to the company for processing. The agency shall have written policies and procedures for processing contaminated or soiled durable medical equipment and shall be in compliance with universal precautions. Guidelines shall specify the separation of dirty equipment from client ready equipment in the warehouse and delivery vehicles.

(5) Physical Location. Each parent and/or branch shall:

(a) Be located in Tennessee;

(b) Be staffed during normal business hours and have a working telephone;

(c) Be used for the dispensing, servicing, and storage of home medical equipment or be used to provide home medical equipment services;

(d) Meet all local zoning requirements; and

(e) Have all required current licenses and/or permits conspicuously posted in the agency.

(6) Additional Compliance Requirements. The agency shall comply with all federal, state, and local laws and regulations.

(a) Written policies and procedures shall be established and implemented by the agency regarding compliance with all applicable federal, state, and local laws and regulations.

(Rule 1200-08-29-.06, continued)

(b) An agency providing prescribed wheeled mobility devices shall obtain a complete face-to-face written evaluation and recommendation by a qualified rehabilitation professional for consumers of prescribed wheeled mobility devices.

(c) The agency must have on staff, or contract with, a qualified rehabilitation professional.

(d) As of July 1, 2007, a one hundred eighty (180) day grace period shall be provided to agencies that provide prescribed wheeled mobility devices if the qualified rehabilitation professional on staff ceases to be employed and the agency has no other qualified rehabilitation professional on staff.

(e) All agencies making available prescribed wheeled mobility devices to consumers in Tennessee shall have a repair service department or a contract with a repair service department located in the state. The agency shall have a qualified technician with knowledge and capability of servicing the product provided to the consumer. As used in this section, "consumer" means an individual for whom a wheeled mobility device, manual or powered, has been prescribed by a physician, and required for use for a period of six (6) months or more.

(f) Delivery and final fitting of a wheeled mobility device shall be determined by a qualified rehabilitation professional. Exempt are wheeled mobility devices under category Group 1 Medicare codes.

(g) The agency shall comply with the following supplier standards:

1. Fill orders from its own inventory or inventory of other companies with which it has contracts to fill such orders, or fabricates or fits items for sale from supplies it buys under a contract;

2. Oversee delivery of items that the supplier ordered for the patient. The supplier is also responsible to assure delivery of large items to the patient;

(Rule 1200-08-29-.06, continued)

3. Honor all warranties, express or implied, under applicable state law;

4. Answer questions or complaints about an item or use of an item that is sold or rented to the patient. If the patient has questions, the supplier will refer the patient to the appropriate carrier;

5. Maintain and repair directly, or through a service contract with another company, items it rents to a patient;

6. Accept returns for substantial medical equipment;

7. Provide the following disclosure information to the department:

   (i) The identity of each person having a five percent (5%) or more ownership or controlling interest in the agency.

   (ii) The identity of subcontractors in which the agency has a five percent (5%) or more ownership interest;

   (iii) At the time such information is disclosed or at any time during the three (3) year period preceding the date such information is supplied, managing employees of the agency, persons having five percent (5%) or more ownership or controlling interest, and subcontractors in which the agency has five percent (5%) or more ownership interest must disclose any other entity providing items or services that receives payment under title XVIII; and

   (iv) Managing employees of the agency, persons having five percent (5%) or more ownership or controlling interest, and subcontractors in which the agency has five percent (5%) or more ownership interest must disclose

(Rule 1200-08-29-.06, continued)

any penalties, assessments, or exclusions assessed against such person under Section 1128, 1128A, or 1128B of the Social Security Act;

8. Maintain general and product liability insurance; and

9. Disclose consumer information to each patient. This consists of a copy of the supplies standards to which it must conform.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-206, 68-11-209, 68-11-226, and 68-11-304.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed October 11, 2007; effective December 25, 2007. Amendment filed December 23, 2009; effective March 16, 2010. Amendment filed December 16, 2013; effective March 16, 2014. Amendments filed July 18, 2016; effective October 16, 2016.*

1200-08-29-.07 RESERVED.

1200-08-29-.08 RESERVED.

1200-08-29-.09 RESERVED.

1200-08-29-.10 INFECTIOUS AND HAZARDOUS WASTE.

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

(Rule 1200-08-29-.10, continued)

protection from animals, precipitation, wind and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents, and does not create a nuisance.

(6) In the event of spills, ruptured packaging, or other incidents where there is a loss of containment of waste, the agency must ensure that proper actions are immediately taken to:

(a) Isolate the area;

(b) Repackage all spilled waste and contaminated debris in accordance with the requirements of this rule; and

(c) Sanitize all contaminated equipment and surfaces appropriately.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000.*

1200-08-29-.11 RECORDS AND REPORTS.

(1) The home care organization providing home medical equipment shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.

(2) The home care organization providing home medical equipment shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211.

(a) Strike by staff at the facility;

(b) External disasters impacting the facility;

(Rule 1200-08-29-.11, continued)

(c) Disruption of any service vital to the continued safe operation of the home care organization providing home medical equipment or to the health and safety of its patients and personnel; and

(d) Fires at the home care organization providing home medical equipment that disrupt the provision of patient care services or cause harm to the patients or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.

(3) Patient Records shall be maintained for each patient who receives in-home services. The patient record must contain detailed, accurate documentation that reflects all of the services or care provided, directly or by contract. The patient record shall contain at a minimum the following:

~~(a) Documentation of patient education and instruction~~;

(a) Except for mail order companies, documentation of in-home patient education and instruction.

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(b) Physician orders as required;

1. A home care organization providing home medical equipment is authorized to receive and appropriately act on a written order for a plan of care for a patient concerning a home health service signed by a physician that is transmitted to the agency by electronically signed electronic mail. Such order that is transmitted by electronic mail shall be deemed to meet any requirement for written documentation imposed by this regulation.

(c) Documentation that patient has been fully informed of patient rights and responsibilities and at a minimum, the right to:

(Rule 1200-08-29-.11, continued)

1. Be fully informed in advance about care and treatment to be provided by the agency;

2. Be fully informed in advance of any changes in the care or treatment to be provided by the agency when those changes may affect the patient's well-being;

3. Voice grievances without fear of discrimination or reprisal;

4. Confidentiality of personal information;

5. Have one's property treated with respect; and

6. Be fully informed of the agency's telephone number for information, questions, and/or complaints about services provided by the agency and a description of the process for investigating and resolving complaints. The agency shall investigate and resolve all patient complaints and document the results in a timely manner. The agency shall label all equipment with the name, address, and telephone number of the agency.

(4) Patient Confidentiality. The agency shall have written policies dealing with patient information. Patient records shall contain signed release of information statements/forms when the agency bills a third-party payor or shares information with others outside the agency. Patient confidentiality polices will address, at a minimum, the following:

(a) A definition of confidential information;

(b) Persons/positions authorized to release confidential information;

(c) Conditions which warrant release of confidential information;

(Rule 1200-08-29-.11, continued)

(d) Persons to whom confidential information may be released;

(e) Policies and procedures for obtaining signatures on, using, and filing release of information forms;

(f) Who has authority to review patient records; and

(g) A statement that training in confidentiality is mandatory for all employees, so that personnel are knowledgeable about and consistently follow confidentiality polices and procedures.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, 68-11-211, and 68-11-260.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed September 1, 2004; effective November 15, 2004. Amendment filed February 23, 2007; effective May 9, 2007. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-29-.12 PATIENT RIGHTS.

(1) Each patient has at least the following rights:

(a) To privacy in treatment and personal care;

(b) To be free from mental and physical abuse. Should this right be violated, the agency must notify the Department within five (5) business days and the Tennessee Department of Human Services, Adult Protective Services immediately;

(c) To refuse treatment. The patient must be informed of the consequences of that decision, and the refusal and its reason must be reported to the treating physician and documented in the medical record;

(Rule 1200-08-34-.01, continued)

(55) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(56) State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(57) Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(58) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these rules.

(59) Surrogate. An individual, other than a consumer's agent or guardian, authorized to make a health care decision for the consumer.

(60) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the consumer.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendments filed December 2, 2005; effective February 15, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.*

1200-08-34-.02 LICENSING PROCEDURES.

(Rule 1200-08-34-.02, continued)

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home care organization providing professional support services without having a license. A license shall be issued only to the person or persons named and only for the premises listed in the application for licensure. The name of the home care organization providing professional support services shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home care organization providing professional support services.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) The home care organization must maintain a contract with the Department of Intellectual and Developmental Disabilities (DIDD). Failure to maintain this contract is a violation of this rule and will subject the license of the home care organization to disciplinary action.

(c)~~(b)~~ Home care organizations authorized to provide only professional support services shall pay an annual fee of one thousand eighty dollars ($1,080.00), except that this annual fee shall be two hundred seventy dollars ($270.00) for (i) home care organizations that also pay a fee to be licensed by the Department of Mental Health and Developmental Disabilities; (ii) home care organizations owned and operated by therapists who pay a fee to be licensed under Title 63, Chapter 13 or 17; or (iii) home care organizations that are owned and controlled by another home care organization that pay an annual license fee of at least one thousand eighty dollars ($1,080.00). The fee must be submitted with the application and is not refundable.

(d)~~(c)~~ The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Consumers shall not be admitted to the agency until a license has been issued. Applicants shall not hold themselves out to the public as being an agency until the license has been issued. A license shall not be issued until the agency is in substantial

(Rule 1200-08-34-.02, continued)

compliance with these rules, including submission of all information required by T.C.A. §68-11-206(1) or as later amended, and all information required by the Commissioner.

(e)~~(d)~~ The applicant must prove the ability to meet the financial needs of the agency providing professional support services.

(f)~~(e)~~ The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(g)~~(f)~~ The applicant shall allow the home care organization providing professional support services to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.

(3) A proposed change of ownership must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.

(a) For the purposes of licensing, the licensee of an agency has the ultimate responsibility for the operation of the agency, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the agency's operation is transferred.

(b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.

(Rule 1200-08-34-.02, continued)

(c) Transactions constituting a change of ownership include, but are not limited to, the following:

1. Transfer of the facility's legal title;

2. Lease of the facility's operation;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;

4. One partnership is replaced by another through the removal, addition or substitution of a partner;

5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;

6. The consolidation of a corporate facility owner with one or more corporations; or,

7. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives;

(Rule 1200-08-34-.02, continued)

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government; or,

5. Corporate stock transfers or sales, even when a controlling interest.

(e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

(4) Renewal.

(a) In order to renew a license, each home care organization providing professional support services shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(Rule 1200-08-34-.02, continued)

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. a completed application for licensure;

2. the license fee provided in rule 1200-08-34-.02(2)(b); and

3. any other information required by the Health Services and Development Agency.

(d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, § 68-11-209(a)(1), §68-11-210, 68-11-216, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009].* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendment filed May 27, 2004; effective August 10, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-34-.03 DISCIPLINARY PROCEDURES.

(1) The Board may suspend or revoke a license for:

(a) Violation of federal or state statutes;

* 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)
Paul Boyd	X				
Robert Breeden	X				
Evelyn Brock	X				
Joshua Crisp	X				
Thomas Gee	X				
Jennifer Gordon-Maloney				X	
Chuck Griffin	X				
Patricia Ketterman	X				
Carissa Lynch	X				
Annette Marlar				X	
Roger Mynatt	X				
Lisa Piercey	X				
Sherry Robbins		X			
Kenneth Robertson				X	
Rene Saunders			X		
Jim Shulman	X				
Gina Thorneberry	X				
Janet Williford	X				
Bobby Wood				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 06/06/2018 (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: *04/10/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/06/18 (mm/dd/yy)*

Date: July 5, 2018

Signature: Caroline R. Tippens

Name of Officer: Caroline Tippens

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: July 5, 2018

Notary Public Signature: Mark Andrew Cole

My commission expires on: March 6, 2022

MARK ANDREW COLE
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-01; 1200-08-10; 1200-08-29, 1200-08-34

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.

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/7/19

Effective on: 4/7/19

Tre Hargett
Secretary of State

RECEIVED
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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Alcoholic Beverage Commission

SUBJECT: Rules for the Sale of Liquor by the Drink, Local Option Liquor Rules, Intra-Industry Conduct and Regulations

STATUTORY AUTHORITY: The current are similar to federal law in various aspects, but the only federal law, to the knowledge of TABC, used as a guideline for the adoption of the proposed rules in 27 CFR 6.94, which allows an industry member to provide "nominal hospitality" as part of an educational seminar.

EFFECTIVE DATES: April 25, 2019 through June 30, 2020

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking hearing rule makes various changes regarding retailers and suppliers and makes certain technical changes. The revisions to the rules were proposed by the relevant industry members and the final rules were adopted with the ongoing support and coordination with such industry members. The proposed rule:

(1) Eliminates the requirement that retail package stores publish notice of their application in a local newspaper at least 3 times before any local hearing for the certificate of compliance;

(2) Provides more latitude in the in industry members providing certain routine business entertainment to retailers, including increasing the maximum amount that can be provided for certain activities from $100 to $300;

(3) Increases and clarifies the manner in which licensees can advertise, including reducing current restrictions on direct communications to consumers while still providing protection to consumers against unwanted communications;

(4) Removes advance approval requirements for consumer education seminars and requires only 2 days

advance notice to the T ABC and clarifies that any T ABC permit holder may serve alcoholic beverages at a consumer education seminar;

(5) Specifies certain circumstances in which a supplier of alcoholic beverages may also own an establishment selling alcoholic beverages at retail for on premise consumption while otherwise maintaining the three tier system in the state;

(6) Limits and reduces the times in which a manufacturer representative permit would be required.

(7) Eases the manner in which a manufacturer can add a noncontiguous premises for storage of spirits by requiring only notice of such additional storage instead of Commission approval;

(8) Clarifies when a private event not requiring any license can be held;

(9) Clarifies that distilled spirits may be imported in bulk for manufacturing, rectifying, or blending alcoholic beverages and clarifies what the term "rectifying" means.

(10) Allows industry members to award prizes to retail employees as part of nationwide contests with the prior written approval of the T ABC;

(11) Allows industry members to participate in trade shows and conventions for retailer or industry associations;

(12) Increases the ability of industry members to provides free samples of alcoholic beverages to retailers; and

(13) Increases the type of items that an industry member can provide to a retailer for their own use or for further dissemination to consumers and makes other beneficial revisions regarding the offering of contents, items, and services by industry members.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Comments to the proposed rules are attached to this filing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Beginning in August, 2016, the Tennessee Alcoholic Beverage Commission (TABC) requested suggestions for changes to the TABC rules and regulations effecting retail package stores, retail food stores, and manufacturers of alcoholic beverages. The proposed rules are the result from this industry feedback after multiple periods of revisions and continued work with the industry, especially including working with several organizations that represented business interests in the state, including the interests of small businesses. As a result, the proposed rules benefits small business retail package stores, retail food stores, and manufacturers throughout the state. This rule benefits small businesses by doing the following:

(1) Eliminates the requirement that retail package stores publish notice of their application in a local newspaper at least 3 times before any local hearing for the certificate of compliance. This removal removes a significant burden on applicant retail package store;
(2) Provides more latitude in the in industry members providing certain routine business entertainment to retailers, including increasing the maximum amount that can be provided for certain activities from $100 to $300;
(3) Increases and clarifies the manner in which licensees, including small businesses, can advertise, including reducing current restrictions on direct communications to consumers while still providing protection to consumers against unwanted communications;
(4) Removes the requirement that retail package stores obtain approval for a consumer education seminar at least 4 days before the event and instead requires only that notice be given at least 2 days before the event and makes other revisions regarding these events to the benefit of retail package stores and small businesses;
(5) Specifies certain circumstances in which a supplier of alcoholic beverages may also own an establishment selling alcoholic beverages at retail for on-premise consumption while otherwise maintaining the three tier system in the state;
(6) Limits and reduces the times in which a manufacturer representative permit would be required. This is very beneficial to small businesses as many small businesses use certain persons to promote alcoholic beverages while not soliciting orders and this rule specifies that such persons would not need this permit;
(7) Eases the manner in which a manufacturer can add a noncontiguous premises for storage of spirits by requiring only notice of such additional storage instead of Commission approval;
(8) Clarifies when a private event not requiring any license can be held;
(9) Increases the ability of industry members to provides free samples of alcoholic beverages to retailers; and
(10) Increases the type of items that an industry member can provide to a retailer for their own use or for further dissemination to consumers and makes other beneficial revisions regarding the offering of contents, items, and services by industry members.

In addition, several additional changes to update the rules to be consistent with current law, as well as several technical corrections, had been made providing additional clarity on the law to the benefit of small businesses. An exact number of such small businesses affected is impossible to estimate at this time, but is expected to be substantial and significant. There are no state or federal counterparts for which this rule can be effectively compared to. The exemption of small businesses from this rule would be detrimental to the small businesses of this state and in certain cases may be contrary to statute.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

Proposed rule does not have any expected impact on local government.

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;

This proposed rule makes various changes regarding retailers and suppliers and makes certain technical changes. The revisions to the rules were proposed by the relevant industry members and the final rules were adopted with the ongoing support and coordination with such industry members. The proposed rule:

(1) Eliminates the requirement that retail package stores publish notice of their application in a local newspaper at least 3 times before any local hearing for the certificate of compliance;
(2) Provides more latitude in the in industry members providing certain routine business entertainment to retailers, including increasing the maximum amount that can be provided for certain activities from $100 to $300;
(3) Increases and clarifies the manner in which licensees can advertise, including reducing current restrictions on direct communications to consumers while still providing protection to consumers against unwanted communications;
(4) Removes advance approval requirements for consumer education seminars and requires only 2 days advance notice to the TABC and clarifies that any TABC permit holder may serve alcoholic beverages at a consumer education seminar;
(5) Specifies certain circumstances in which a supplier of alcoholic beverages may also own an establishment selling alcoholic beverages at retail for on-premise consumption while otherwise maintaining the three tier system in the state;
(6) Limits and reduces the times in which a manufacturer representative permit would be required.
(7) Eases the manner in which a manufacturer can add a noncontiguous premises for storage of spirits by requiring only notice of such additional storage instead of Commission approval;
(8) Clarifies when a private event not requiring any license can be held;
(9) Clarifies that distilled spirits may be imported in bulk for manufacturing, rectifying, or blending alcoholic beverages and clarifies what the term "rectifying" means.
(10) Allows industry members to award prizes to retail employees as part of nationwide contests with the prior written approval of the TABC;
(11) Allows industry members to participate in trade shows and conventions for retailer or industry associations;
(12) Increases the ability of industry members to provides free samples of alcoholic beverages to retailers; and
(13) Increases the type of items that an industry member can provide to a retailer for their own use or for further dissemination to consumers and makes other beneficial revisions regarding the offering of contents, items, and services by industry members.

(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 current are similar to federal law in various aspects, but the only federal law, to the knowledge of TABC, used as a guideline for the adoption of the proposed rules is 27 CFR 6.94 which allows an industry member to provide "nominal hospitality" as part of an educational seminar.

(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 primarily impact licensed retailers and suppliers with some impact on licensed wholesalers. These rules were created in coordination with and with the support of the Tennessee Wine and Spirits Retailers Association, the Distilled Spirits Counsel, the Tennessee Distiller's Guild, The Wine Institute, and Wine and Spirits Wholesalers of Tennessee.

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

There are 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;

The fiscal impact is minimal.

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

Clay Byrd, Director; Zack Blair, Assistant Director

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

Clay Byrd, Director

(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

500 James Robertson Pkwy, 3rd Floor, Nashville, TN 37243
615-741-7620
Clay.Byrd@tn.gov

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

There is no such additional information.

TN Tennessee State Government

MEMO

From: Clayton Byrd, Executive Director

Re: TABC Response to Public Hearing Comments

Date: October 20, 2017 and updated on September 11, 2018

On December 9, 2016, a rulemaking hearing was held in accordance with the Uniform Administrative Procedures Act. At the hearing, various comments were made regarding proposed revisions to Chapters 3 and 6 of the proposed rules of the Tennessee Alcoholic Beverage Commission (TABC). The TABC also accepted written comments after the hearing. Below please find the TABC's response to the verbal and written comments. In addition, further comments were made at the Commission's meeting held on August 22, 2017, in which the Commission took up these rules, and from those comments additional revisions to the rules were made prior to their adoption by the Commission at its meeting held on September 26, 2017. In September of 2018 further revisions were made after passage of legislation by the Tennessee General Assembly. The final adoption of these rules by the Commission occurred on September 27, 2018.

(1) BULK TRANSPORT OF WINE - Rule 0100-03-.12(2) - A request was made that this rule be removed or revised to be consistent with the statutes on this subject and Chapter 7 of the TABC's rules. The TABC agrees with this proposed change and this paragraph has been removed due to the updated statute.

(2) DEFINITION OF IMPORTER – Rule 0100-03-.16(1) – Comments were made to include "non-resident sellers" and "non-manufacturer non-resident sellers" in the title of the rule because both constitute "importers" under state law. The TABC agrees. Pursuant to Tenn. Code Ann. 57-3-101(9) an "importer" includes both a "non-manufacturer non-resident seller" and a "non-resident seller". The title/rules have been revised to clarify this issue.

(3) TRUST - Rule 0100-03-.16(1)(b) - A request was made that this rule specify that only blind trusts could be used for the purposes of this rule to avoid a dual interest conflict. Pursuant to Public Chapter 371, the General Assembly authorized, for a two year period, manufacturers to hold an interest in a on premise retailer, as long as, the interest is held in an irrevocable trust by an

independent trustee. The TABC interprets this statute to allow for beneficiaries to hold an interest in both license types in the trust arrangement; provided, that the beneficiaries do not exercise control over the trust property. In other words, state law requires the trustee to be independent; however, it does not require independent beneficiaries. This rule clarifies that issue in the context of the new public chapter.

(4) INDIRECT INTERESTS - Rule 0100-03-.16(1)(b) - A request was made to clarify that the minimal ownership requirement applies to both a five percent (5%) interest in a manufacturer and a five percent (5%) interest in an on-premise establishment. The TABC agrees that the five percent threshold applies to both license types. This minimum ownership requirement is consistent with the minimum disclosure requirement in Tenn. Code Ann. 57-4-201(b)(2).

(5) INTERESTS IN WHOLESALERS - Rule 0100-03-.16(1)(c) - A request was made to clarify that an importer, non-resident seller, or non-manufacturer non-resident seller could have a direct or indirect interest in a wholesaler. The TABC agrees with this request and added language making such clarification as a new Rule 0100-03-.16(1)(c).

(6) TAXES ON DONATED ALCOHOLIC BEVERAGES - Rule 0100-03-.20 - Comments were made about revising the rule to clarify which taxes were required to be paid by the donating manufacturer when donating alcoholic beverages to a non-profit. The TABC does not believe that any further clarification is required because it is the responsibility of the donating entity to determine which taxes must be paid.

(7) PRIVATE PARTIES - Rule 0100-03-.22(1)(e) - Comments were made requesting that (1) the requirement that a private party not have any "commercial purpose" be removed, revised, or clarified, such that the rule would not be overly broad, and that (2) the rule be clarified by specifically prohibiting manufacturers and importers from donating alcoholic beverages to private parties. The TABC agrees. The revised rule clarifies that the prohibited commercial purpose means a commercial purpose related to the sale, marketing, and promotion of alcoholic beverages. Moreover, the revised rule provides that a licensee may not donate alcoholic beverages to a private event, which eliminates a loop hole in existing TABC rules.

(8) ADVERTISING SERVICES - Rule 0100-06-.03(4) - A request was made that the requirement that industry members list all licensed retailers selling their

brand that are within the geographic area covered by the advertisement, if the industry members wishes to advertise a list of retailers where their products may be sold. The proposed revision would allow an industry member to select certain retailers to advertise the availability of product. Authorizing this method would be to provide certain retailers with something of value to the exclusion of other retailers. Therefore, the TABC will not incorporate this suggestion due to discrimination concerns.

(9) SAMPLES TO RETAILERS - Rule 0100-06-.03(10) - Various comments were provided regarding whether or not there should be additional limitations on the provision of samples to retailers. The TABC considered this suggestion previously and determined the existing proposed rule serves as a reasonable accommodation to multiple stakeholder interests.

(10) DELIVERY BY RETAIL PACKAGE STORES - A request was made that the rules be revised to authorize any agent of a retail package store to deliver alcoholic beverages under the license of the retail package store, instead of only such store's employees. State law prohibits a third party agent of a retail package store from delivering alcoholic beverages on behalf of the retail package store. After drafting of these proposed rules, Chapter 765 of the Public Acts of 2018 revised a number of statutes related to delivery. Therefore, it has been determined to remove the provisions of the rules concerning delivery in order to take those up in a separate rulemaking process.

(11) PROVISION OF STOCKING, ROTATING, PRICING AND OTHER SERVICES TO RETAILERS - Rule 0100-06-.03(13) - A request was made that the rule allow manufacturers and importers, in addition to wholesalers, to provide such services to retailers. The TABC maintains that this proposed rule would authorize industry members to perform activities that are traditionally reserved to wholesalers, and that a statutory change would be a more appropriate avenue to authorize these practices.

(12) DIGITAL REBATES - Rule 0100-06-.03(14) - A request was made that the rule allowing manufacturer and importer rebates be clarified to allow for such rebates to be scanned and emailed to the manufacturer or importer, instead of only being mailed. The TABC agrees and will include this change.

(13) PRODUCT DISPLAYS - Rule 0100-06-.03(2)(b) - A request was made to remove the allowance of industry members to list the name and address of retailers

on product displays. The TABC agrees with this request and has made this change.

(14) CONTESTS - Comments were made requesting the restriction of the proposed rule allowing retail employees to participate in certain contests. The TABC agrees that some restriction would be beneficial and has revised the proposed rule to require that any such contest receive prior written approval of the TABC.

(15) ROUTINE BUSINESS ENTERTAINMENT - Rule 0100-06-.03(7)(e) - A request was made to limit the expansion of the rules on routine business entertainment to where such business entertainment must be either within the state or within 100 miles of the state. The TABC agrees with this request and has made this change.

(16) FEDERAL LAW - Rule 0100-06 - Comments were made that certain rule revisions may be contrary to federal law. The TABC agrees that the portion of Rule 0100-06-.03(12) allowing the provision of reasonable meals and local ground transportation could potentially lead to a violation of federal rules, and the TABC has changed this to track such federal rule to instead allow "nominal hospitality". However, all other rule revisions referenced in the comment are compliant with federal and therefore have not been revised.

(17) BAR SPENDING - Rules 0100-06 - A request was made that a new rule be added to allow an industry member to purchase alcoholic beverages from a retailer in order to then give such alcoholic beverages away to customers located in such retailer. The TABC believes this practice would be providing something of value to another tier and therefore the rule will remain unchanged.

(18) DISPLAY ENHANCEMENTS - Rule 0100-06 - A request was made that a new rule be added to allow an industry member to give certain display enhancements worth up to $155 with the intent that such display enhancements be awarded to customers of the retailers after its use as a display has expired. The TABC maintains that this practice would authorize providing something of significant value to another tier, which could result in disparate treatment between separate retailers. As a result, the TABC will not include this proposal due to discrimination and inducement concerns.

(19) WHOLESALERS - Various comments were made requesting changes to the rules that specifically addressed wholesalers. The proposed rules were proposed to update the rules regarding retail package stores, manufacturers, and importers, and not any other license type. Changes to any other rules are considered to be outside of the scope of these proposed rules.

- Rule 0100-01-.03(12): Comments were made to include LBDs in this section. The proposed rule primarily deals with wholesalers and LBDs, which is beyond the scope of this particular rulemaking process.

- Rule 0100-01-.03(16): Comments were made to eliminate the TABC consent/notification requirement for a licensee's name change. This is beyond the scope of this particular rulemaking process, as it applies to all license types

- Rule 0100-01-.07(2)(b): Comments were made to clarify existing rules on special occasion permits and tax exempt status. This is beyond the scope of this particular rulemaking process, as it applies to special occasion permits.

- Rule 0100-03-.06(1): Comments were made to restrict the delivery of point of sale advertising materials to wholesalers. The TABC agrees with this request and has revised the rules to require that such materials be provided to the wholesaler who would then provide them to the retailer.

- Rule 0100-03-.09: Comments were made to a reference to the renewal process when a retailer fails to timely pay wholesalers in accordance with Rule 0100-06-.04. The TABC considers untimely payments as a part of a retailer's renewal application pursuant to statute, and therefore, no further rule/revision on this point is necessary.

- Rule 0100-03-.10(5): Comments were made suggesting that wholesalers be required to identify products that are provided through the wholesale tier for sampling or tastings be marked "not for resale". The TABC agrees with this proposed change and believes it would be appropriate to impose this obligation on all industry members due to tied house concerns over donated product.

- Rule 0100-03-.19(1): Comments were made to clarify instances where a manufacturer's permit would be required in performing solicitations, sales, marketing and other sales conduct. The TABC maintains that a manufacturer's representative permit is not required when an individual is promoting or marketing product, but that the permit would be required if the individual is soliciting orders or selling alcoholic beverages on behalf of a manufacturer.

Sincerely,

Clayton Byrd
Executive Director
Tennessee Alcoholic Beverage Commission

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-25-19
Rule ID(s): 0521-0523
File Date: 1/25/19
Effective Date: 4/25/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	Clay Byrd , Director; Zack Blair, Assistant Director
Address:	500 James Robertson Pkwy, 3rd Floor, Nashville, TN
Zip:	37243
Phone:	615-741-7620
Email:	Clay.Byrd@tn.gov; Zack.Blair@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0100-01	Rules for the Sale of Liquor by the Drink
Rule Number	**Rule Title**
0100-01-.01	Advertising
0100-01-.02	Solicitation of Business and Services Restricted
0100-01-.03	Conduct of Business
0100-01-.04	Transfer of Locations
0100-01-.05	Applications by Private Clubs
0100-01-.06	Additional Rules Applicable to Caterers
0100-01-.07	Applications for Special Occasion Permits
0100-01-.08	Terminal Building of a Commercial Airport Carrier

Chapter Number	**Chapter Title**
0100-03	Local Option Liquor Rules
Rule Number	**Rule Title**
0100-03-.01	Advertising of Alcoholic Beverages Generally
0100-03-.02	Reserved
0100-03-.03	Advertising of Distilled Spirits and Wine by Direct Communications

0100-03-.04	Reserved
0100-03-.05	Advertising Alcoholic Beverages on Billboards and Outside Signs
0100-03-.06	Advertising Materials Within Retail Premises
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0100-06	Intra-Industry Conduct and Regulations
Rule Number	**Rule Title**
0100-06-.01	Definitions
0100-06-.02	General Prohibitions
0100-06-.03	Exceptions to General Prohibitions
0100-06-.04	Limitations on Credit Sales
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Chapter 0100-01, Rules for the Sale of Liquor by the Drink, is amended by deleting the chapter in its entirety and by substituting instead the following language:

RULES OF TENNESSEE ALCOHOL BEVERAGE COMMISSION CHAPTER

0100-01 RULES FOR THE SALE OF LIQUOR BY THE DRINK

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0100-01-.01 Advertising.

(1) Billboards and Outside Signs.

(a) Alcoholic Beverages may be advertised on signs and billboards in those cities and counties that have legalized the sale of such beverages under the provisions of T.C.A. § 57-3-106.

(b) Advertising may bear trademarks, trade slogans, ~~trade slogans~~ or other distinctive designations associated with a particular brand while also bearing the name, or advertise the establishment, or refer to the services of any licensee. However, all advertising costs, direct or indirect, must be borne by the on-premise consumption licensee, except as permitted by Rule 0100-06-.03.

(2) Advertising Outside the Licensed Premises Relating to the Availability of Alcoholic Beverages.

(a) Advertising on Radio or Television Stations. The availability of alcoholic beverages may be advertised on radio or television stations in Tennessee subject to the following restrictions:

1. Restrictions. An advertisement shall not contain:

i. Any statement that is materially false or misleading~~ in any material particular~~.

ii. Any statement that is disparaging of a competitor's products.

iii. Any statement, design, device, or representation which is obscene or indecent.

iv. Any statement, design, device, or representation of or relating to analysis, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

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v. Any statement that the product is produced, blended, made, bottled, packed, or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state, or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(b) Statements Inconsistent with Labeling. No advertisement shall contain any statement concerning a brand or lot of ~~distilled spirits~~ alcoholic beverages that is inconsistent with any statement on the labeling thereof.

(c) Curative and Therapeutic Effects. No advertisement shall contain any statement, design, or device representing that the use of ~~distilled spirits~~ alcoholic beverages has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(d) Place of Origin. No advertisement shall represent that the ~~distilled spirits~~ alcoholic beverages were manufactured in, or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(e) Flags, Seals, Coats of Arms, Crests, and Other Insignia. No advertisement shall contain any statement, design, devices, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, any state flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made, used by, produced for, under the supervision of, in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(f) Brand and Establishment Advertisement Prohibited. No advertisement relating to the availability of any alcoholic beverages in any licensed premises shall carry any advertising associated with a particular brand of alcoholic beverages if the cost of such advertising is paid by the industry member, except as permitted by Rule 0100-06-.03.

Authority: T.C.A. §§ 57-1-209,~~57-3-104,~~ 57-4-201, ~~57-2-209 to implement §~~ and 57-3-106~~ and Chapter 211, Public Acts of 1967, and 57-818 to implement §57-111 and Chapter 211, Public Acts of 1967~~.

0100-01-.02 Solicitation Of Business, And Services Restricted

(1) Manufacturer and Importer, Limited to Wholesale Solicitation.

(a) No manufacturer, importer or representative thereof shall solicit orders of alcoholic beverages or wine in any manner from anyone in this state except from those holding wholesale liquor licenses.

(b) No manufacturer, importer, or representative thereof shall perform or provide any service whatsoever for a licensee hereunder, or his employee in this state, whether on or away from the licensed premises. No manufacturer, importer, or

representative thereof shall enter the premises of any licensee hereunder, except as a bona fide customer.

(c) No manufacturer, importer, or representative thereof shall give anything of value whatsoever, including but not limited to alcoholic beverages and money, to any Tennessee retail licensee or his employee whether on or away from the retail premises. Furthermore, no manufacturer, importer, or representative thereof may take into any licensed premises hereunder any alcoholic beverages in any quantity.

~~(d) Notwithstanding the prohibitions contained herein, all conduct or services permitted by 0100-06 of these regulations are permitted.~~

Authority: T.C.A. §§ ~~57-818,~~ 57-1-209, 57-3-104, 57-3-202, and 57-3-405.

0100-01-.03 Conduct Of Business.

(1) Business Management Restricted.

(a) Every licensed business shall be managed by the holder of the license, if an individual, or by a partner or corporation officer or by a manager designated to the Commission in the event that the business is operated by a partnership or corporation (or by a manager in any case who has been designated to the Commission). The Alcoholic Beverage Commission is to be notified in writing, by certified mail, of any change in management within seven (7) days of the actual change.

(b) Each on-premise manager, assistant manager, and/or any individual working in such capacity, whether paid by salary or hourly and/or in training, and having duties which directly or indirectly impacts on the selling and dispensing of alcoholic beverages, must complete and submit to the Tennessee Alcoholic Beverage Commission a questionnaire within seven (7) days of assuming their managerial duties.

(c) Each on-premise manager, assistant manager, and/or any individual working in such capacity and having duties which directly or indirectly impacts on the selling and dispensing of alcoholic beverages must have a valid server permit subject to the provisions of T.C.A. § 57-3-707.

(2) Consumption on Licensed Premises. No licensee shall permit alcoholic or malt beverages to be consumed on the licensed premises between the hours of 3:00 a.m. and 8:00 a.m. on Monday through Saturday or between the hours of 3:00 a.m. and 10:00 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12:00 p.m. on Sunday.

(3) Free Access to Licensed Premises Without Warrant. Immediate access, without a warrant, to all parts of a licensed premise shall at all times be accorded agents of the Tennessee Alcoholic Beverage Commission.

(4) Refusal of Cooperation. Any licensee, his agent, or employee who refuses to open or disclose his records to, furnish information to, or who furnishes false and/or misleading information to an agent or representative of the Tennessee Alcoholic Beverage Commission upon any matter relating to or arising out of the conduct of the licensed premises shall subject the license to revocation or suspension.

(5) Licensees Not to Combine. No combination of licensees shall be permitted to purchase merchandise in the name of the licensee and subsequently distribute merchandise which they have purchased in combination with each other to any one of the combination, and no licensee shall be permitted to transfer goods from one to another. If any member of the combination is apprehended violating this regulation, every member shall likewise be guilty of a violation, and it shall also be a violation for the wholesale distributor to furnish merchandise to any combination of licensed dealers.

(6) Licensee Responsible For Law and Order on Licensed Premises. Each licensee shall maintain his establishment in a decent, orderly, and respectable manner in full compliance with all laws of Tennessee, Commission rules and regulations, federal statutes, and ordinances and laws of the municipality and/or county where licensed premises are located at all times. The renting or leasing of the licensed premises for an event to a non-licensed entity, person, or corporation is specifically deemed not to be a defense for a violation of this rule and does not diminish the licensee's responsibility to comply with this rule.

(7) Sanitary and Fire Standards. All licensed premises shall be kept in clean and proper sanitary condition, and in full compliance with the provisions and regulations of all duly authorized health authorities whether state, county, or city.

(8) On-Premise Sale By Bottle Restricted. On-premise licensees shall not sell or give away distilled spirits by the bottle or package, open or unopened. Licensees shall have the right to sell wines, champagnes, or malt beverages by the bottle or container for consumption on the premises only, and said bottle or container must be opened prior to its being served to the consumer, except as specifically provided in T.C.A. § 57-4-203.

(9) On-Premise Employees' Activities Restricted ("B-Girl" Activity). It shall be unlawful for any person who is an employee of an on-premise licensee or any other person on behalf of the on-premise licensee to solicit alcoholic beverages ~~or distilled spirits~~ for public consumption by the employee or any other person, and it shall be further unlawful to dispense or consume any beverage under the pretense that it is an alcoholic beverage ~~or distilled spirits~~ for public consumption but is not. However, nothing in this section shall preclude an industry member and/or its employees or representatives from promoting products as permitted under Rule 0100- 03-.11.

(10) Restriction As To Age Of Dispensing Employees. No person under the age of eighteen (18) years shall be permitted to dispense, serve, or sell alcoholic or malt beverages in any establishment licensed under the provisions of T.C.A. § 57-4-101, *et seq.*

(11) Dual Interests Prohibited. Except as provided in Rule 0100-03-.16:

(a) No licensee holding a license issued pursuant to T.C.A. § 57-4-101, *et seq.* and no person owning an interest, financial or otherwise, in a partnership or corporation holding such a license, shall have any interest, directly or indirectly, in any business licensed under the provisions of T.C.A. §§ 57-3-202, or 57-3-203~~, or 57-3-204~~.

(b) No person having any interest, financial or otherwise, directly or indirectly, in any business licensed under the provisions of T.C.A. §§ 57-3-202~~,~~ or 57-3-203 ~~or 57-3-204,~~ shall have any interest in any business licensed under T.C.A. § 57-4-101, *et seq.*

(12) Restrictions on License After Surrender or Revocation.

(a) No license will be issued to the spouse, child or children, son-in-law or daughter-in-law, employee, or other person having any interest in the business of a licensee whose license has been revoked, for the privilege of doing business at the same location or in close proximity to the location of the establishment whose license was revoked.

(b) The Commission may refuse to reissue a license to the same person, firm, or corporation whose license has been revoked for one (1) year from the date of said revocation.

(c) The Commission may treat a surrender of a license as a revocation under the restrictions contained in this paragraph.

(13) Licensee Must Surrender License If Business Discontinued. Whenever any licensee discontinues business for any reason, he shall immediately notify the Commission in writing and surrender his license.

(14) Prohibited Practices. No licensee, employee, or agent of a licensee shall give away any sealed package, or any drink, of wine or alcoholic beverages except as permitted by T.C.A. § 57-3-404 and Rules 0100-03-.11 and 0100-06-.03. "Give" for the purpose of this paragraph, shall include:

(a) Offering or delivering any free alcoholic beverage or wine to any person or group of persons;

(b) Offering or delivering unlimited drinks of wine or alcoholic beverages for a fixed price if the actual cost of all ingredients, including the alcohol and all applicable taxes, of the drinks actually served to a customer exceeds the fixed price charged; or

(c) Awarding any wine or alcoholic beverages as a prize or free drink or encouraging or conducting any game or contest which involves drinking or uses wine or alcohol as a prize or free drink.

(15) Happy Hour Restrictions. No licensee, employee, or agent of a licensee shall engage in any of the following promotional practices during the period beginning at 10:00 p.m., prevailing time, until the time set by law for closing of such licensed establishments:

(a) Serve two (2) or more drinks or containers of alcoholic beverages to a consumer at one time.

(b) Increase the volume of alcohol contained in any such drink during any calendar week without increasing proportionately the price regularly charged for such drink.

(16) Business Name Change. At least seven (7) calendar days prior to any change in its business name or "d/b/a" name, a licensee must submit the proposed change in writing to the Commission for approval. Upon approval, the Commission will amend the license to reflect the licensee's new business or "d/b/a" name.

(17) Display of License. Any person, partnership, corporation, or other legal entity holding an on-premise consumption liquor-by-the-drink license issued under Chapter 4 of Title 57 of Tennessee Code Annotated, shall prominently display and post, and keep displayed and posted, in the most conspicuous place in the licensed premises, the license so issued.

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(18) Server Permits. On-premise consumption licensees should maintain and have available for review on the premises documentation of the date of hire for anyone working in a capacity to serve alcoholic beverages. Acceptable documentation shall include a dated application for employment or a dated W-4 form. If the licensee does not have acceptable documentation of the date of hire for the employee, then it will be deemed that the employee has worked at the licensed premises greater than sixty-one (61) days.

(19) Seating. All on-premise consumption licensees licensed as a restaurant shall maintain a minimum seating for forty (40) people at tables and all on-premise consumption licensees licensed as a hotel shall maintain a minimum seating for seventy-five (75) people at tables during business hours with the exception of wine-only restaurants as defined at T.C.A. § 57-4-101(c) ~~gourmet restaurants as defined at T.C.A. § 57-4-102(27)(e)~~, or any other statutory exception. Seasonal seating (i.e. outside patio seating) shall count toward total numbers, but not toward the minimum seating requirements at tables. Seats at bars will be counted toward the minimum number of seats at tables if the bar is at least twenty (20) inches in depth and meals may be served and are regularly served at the bar. Those bars containing less than twenty (20) inches in depth will be looked at on a case by case basis with such factors as the type of menu served, placement of the bar, and whether food is regularly served at that bar.

(20) Minors in Possession of Alcohol. All on-premise consumption licensees are required to insure that minors are not in possession of and/or are not allowed to consume any alcoholic beverage – including malt beverages or beer – on the licensed premises.

(21) Employer Responsible for Employee's Action.

(a) Licensees are at all times responsible for the conduct of their businesses and are at all times directly responsible for any act or conduct of any employee which is in violation of the state statues, the rules and regulations of the Commission, and/or any local ordinance or federal statute whether the licensee be present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of a licensee's agent or employee shall be construed as the act of the employer, and disciplinary actions will proceed as though he were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the employer's direction and with his knowledge.

(b) In any disciplinary proceeding, it shall be no defense that an employee or agent of a licensee acted contrary to order, or that a licensee did not personally participate in the violating action or actions. However, disciplinary actions related to sales of alcoholic beverages to minors, intra-industry violations, and trade violations are subject to the provisions of Rule 0100-05-.07, the Responsible Licensee Program.

(22) Application Process for On-premise Consumption Licenses.

(a) Applications, in duplicate, shall be submitted to the nearest office of the ABC. In addition, the following documents must be submitted in support of an application for license to sell alcoholic beverages for consumption on premises:

1. Completed application;

2. Questionnaire for anyone having at least five percent (5%) ownership in the business, for any officers of a corporate applicant, and for any manager, assistant manager, and/or any individual working in such

capacity and having duties which directly or indirectly impacts on the selling and dispensing of alcoholic beverages;

3. Lease agreements, assignments, subleases, and/or deed to property;

4. Current Certificate of Occupancy;

5. Inspection by the Tennessee Alcoholic Beverage Commission;

6. Acknowledgment of the rules and regulations;

7. Menu;

8. Price Schedule of Drinks;

9. Proof that applicant entity, if a corporation, LLC, LP, etc., is registered with the Tennessee Secretary of State's office, and the submission by said applicant entity of a Certificate of Existence/Good Standing issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new license or renewal of an existing license. If the applicant entity was formed in another state or foreign jurisdiction, the applicant must submit a Certificate of Authorization issued by the Tennessee Secretary of State's Office within thirty (30) days of the applicant's application for a new license or renewal of an existing license.

10. Corporate charter/Articles of Organization;

11. List of Officers/Owners/Members/Partners;

12. Sales & Use Tax Certificate of Registration;

13. Bond Posted with the Department of Revenue;

14. Application fee;

15. Completed declaration of citizenship form to be submitted by owner(s), officer(s), and/or principal(s) of the applicant or others as required by ~~P.C 1061 (2012)~~ T.C.A. § 4-58-101, *et seq*.

16. Any other information that the Tennessee Alcoholic Beverage Commission may request.

(b) In addition, any of the following documents which exist must also be submitted:

1. Management agreements;

2. Bill of sale.

Authority: T.C.A. §§ 4-58-103, ~~57-1-207,~~ 57-3-104~~(c)~~, ~~57-3-406~~57-1-209~~(b)~~, 57-3-704, 57-3-710, 57-4-102~~(29), 57-4-104(c),~~ 57-4-201~~(a)(2)~~, and 57-4-203, 57-7-223 and Chapter 371, Public Acts of 2017. ~~and 2008 Public Chapter 649.~~

0100-01-.04 Transfer Of Locations.

(1) The transfer of an on-premise consumption liquor license from one location to another shall be subject to the following provisions:

(a) The licensee must submit to the Commission prior to the actual move the following documents for approval:

1. Completed application;

2. Lease agreements, assignments, subleases, and/or deed to property;

3. Use and Occupancy permit;

4. Inspection by the Tennessee Alcoholic Beverage Commission;

5. Letter of explanation for the request; and

6. Any other information that the Tennessee Alcoholic Beverage Commission may request.

(b) Selling, consuming, and/or otherwise dispensing alcoholic beverages at the new location prior to the approval by the Commission is in violation of T.C.A. § 57-4-203(i).

Authority: T.C.A. §§ ~~57-3-205, 57-1-207, 57-1-201,~~ 57-1-209, 57-3-104, 57-3-212, ~~and~~ 57-4-201 and 57-4-203 ~~(a)(2).~~

0100-01-.05 Applications By Private Clubs.

(1) Public Notice. Each club, as defined by ~~Pursuant to~~ T.C.A. § 57-4-102~~(7)~~, ~~each club~~ applying for a license to sell alcoholic beverages for consumption on its premises shall place a notice in a newspaper of general circulation in the county or municipality to be served indicating the club's intention to apply for a license from the Alcoholic Beverage Commission. The notice shall contain the information prescribed in subsection (2) below and shall appear in at least three (3) consecutive issues preceding the date that the application is filed with the Commission. The application shall be accompanied by a copy of the published notice and the sworn statement of the applicant that the notice was published in accordance with this section.

(2) Format of Notice. Each private club applicant shall place the following notice in the newspaper as described above:
PRIVATE CLUB LIQUOR LICENSE NOTICE
Take notice that _____
(Name of Club)
intends to seek a license from the Tennessee Alcoholic Beverage Commission, ~~226 Capitol Boulevard Building~~ 500 James Robertson Parkway; 3rd Floor; Nashville, Tennessee 37243~~-0755~~, to sell alcoholic beverages to its members and guests for consumption on the club's premises at _____. The officers of
(Address of club's premises)
_____ are: _____
(Name of Club)
_____
(Name and address of officers)
The club currently has approximately _____ regular dues paying members.
_____
(Name/Address of Person Actually in Charge of Sale of Alcoholic Beverages)
will be in actual charge of the sale of alcoholic beverages at the club's premises and has

applied to _____
(City or County)
for a certificate of good moral character.

(3) Size of Notice. The title of the notice shall be all capital letters and at least ten (10) point type size. The text of the notice shall be at least eight (8) point type size and the size of the entire notice shall not be less than two (2) columns by two (2) inches of newspaper space.

(4) Change of Manager. Whenever there is a change in person or persons who are in actual charge of the sale of alcoholic beverages by a private club licensee, the licensee must submit to the Alcoholic Beverage Commission a certificate of good moral character for the new person or persons who will be in actual charge of the sale of alcoholic beverages within thirty (30) days of the change. Nothing in this rule should be interpreted to relieve a private club licensee from the obligation to inform the Commission of a change in management as set out in Rule 0100-01-.03(1).

(5) Application Process for New Private Club Licenses.

(a) Applications, in duplicate, shall be submitted to the nearest office of the ABC. In addition, the following documents must be submitted in support of an application by a private club for a license to sell alcoholic beverages for consumption on premises:

1. Application (in duplicate) (Form ABC-OPP);

2. Questionnaires - officers of club and managers in control of actual sale of alcoholic beverages;

3. List of club officers (names, addresses, date assumed office);

4. Charter, constitution, and any amendments thereto, if club is incorporated;

5. Lease, sublease, deed or other instrument indicating ownership and/or possession of physical premises;

6. Certificate of good moral character for person(s) in actual charge of sale of alcoholic beverages;

7. Newspaper notice accompanied by sworn statement as required by subsections (2) through (3) above;

8. Menu;

9. Department of Revenue Drink Price Schedule;

10. Employees work permit applications;

11. Answers to questions on ABC form - Questions For Private Club Applicants.

(b) In addition, any of the following documents which exist must be submitted:

1. Bylaws;

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2. Minutes of membership or board meetings;

3. Management contract;

4. Loan or financing agreements;

5. Past tax returns (2 years);

6. Resolutions relative to changes in name, purpose, or location of club;

7. Financial statements;

8. Written approval of use and occupancy by appropriate local authorities, where applicable.

(c) Applicants should submit any other documents which indicate the club's compliance with licensing requirements. Such documentation may include items such as announcements of past activities, newsletters sent to members, ledgers reflecting payment of dues in past years and disbursement of funds, IRS recognition as tax-exempt nonprofit organization, sworn statements regarding the club's history and activities, etc. The applicant for a license has the burden of proving that it meets the requirement of the law and is, therefore, eligible to hold a license to sell alcoholic beverages. The fact that the applicant submits all the documents listed above does not automatically entitle the applicant to a license. Further, the applicant may be required to submit additional information or documentation if questions arise.

(d) A license for a private club to sell alcoholic beverages on its premises may only be granted by action of the Alcoholic Beverage Commission itself.

(6) License Renewal and Transfer of Location by Private Clubs.

(a) License Renewal. Each license issued is valid for one (1) year from the date of issuance and expires at midnight on the expiration date. Both the issuance date and the expiration date shall be clearly printed on the face of the license. Failure to timely and properly file the material required by this rule shall result in the expiration of the license.

1. On or before the expiration date of the license, the licensee shall submit an application for license renewal and the appropriate license fee to the nearest office of the Alcoholic Beverage Commission.

2. Applications for license renewal need not submit that material required by rule 0100-01-.05(5) of new applicants.

3. All financial records shall be maintained and available for inspection for a minimum of three (3) years.

(b) Transfer of Location. Licenses issued to private clubs may be transferred from one location to another only upon the following conditions:

1. Written request for approval of such a transfer with adequate explanation for the need of such a transfer.

2. Submittal of a satisfactory lease or deed to the proposed new location.

3. Written approval of the use and occupancy of the proposed new space by the appropriate local officials.

4. Inspection by the Tennessee Alcoholic Beverage Commission.

5. Submittal of a petition or resolution in favor of such a transfer which reflects that it was adopted by a quorum of the club's members at a membership meeting held pursuant to the club's charter and by-laws.

6. When the proposed transfer is into a new jurisdiction, the club shall publish a new notice in compliance with paragraphs (1) through (3) of this rule and supply copies of that notice along with required sworn statement to the ABC as well as a certificate of good moral character upon the person pursuant to T.C.A. § 57-4-201(c)(2).

7. No such transfer shall be approved unless the Commission, in its sole discretion, determines that the licensee continues to meet the requirements of these rules and Chapter 4 of Title 57, T.C.A.

(7) Definitions. For the purpose of this chapter, the following definitions shall be used:

(a) "Non-profit association" shall mean a legal entity which is not-for-profit and has at least the following characteristics:

1. Financial statements covering the immediately preceding years of the club's operations. Financial statements shall clearly indicate the amount and source of all club receipts and the amount and purpose of all club disbursements in specific categories consistent with standard accounting practices. In addition, the financial statements must show a balance sheet of the club's assets and liabilities at the end of the immediately preceding year. Copies of IRS Form W-2 for each employee shall be maintained and made available upon request.

2. Bylaws or rules of the association which provide membership application procedures. Those bylaws or rules shall provide for (a) at least one (1) week waiting period between application for membership and election to membership and (b) a committee composed of three (3) or more members of the club vested with the authority by charter, bylaws or regulations, to approve, reject, or make recommendations on membership applications.

3. An association shall have a written guest policy which reasonably limits access to club facilities by guests.

(b) "In existence and operating" shall mean for at least two (2) years prior to the application for a club license, the association shall have had at least an annual meeting of the membership with a quorum present, shall have taken actions toward the performance of their non-profit purposes, and shall have elected a governing body which meets periodically.

(c) "Regularly paying dues" shall mean that the members have paid dues on a regular schedule at least annually.

(d) "Salary" shall mean a fixed periodical compensation paid for services rendered. No salary may be paid which is based on the amount of liquor or malt beverages sold or on the profits made from such sales.

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(e) "Suitable kitchen" shall mean that the kitchen is adequate to prepare regular meals. Said kitchen shall have sufficient cookware, tableware, and food preparation and storage equipment to actually store, prepare, and serve meals. These facilities shall be inspected and approved by appropriate local zoning and codes inspectors.

(8) Additional Rules for Private Clubs.

(a) Each club shall maintain a complete membership roster. The membership roster shall contain the names of all members, their addresses, and the date on which their dues are to be paid. Private club licensees shall maintain their membership records at the club premises and make them available to representatives of the Alcoholic Beverage Commission during hours when the club is open to its members. Since minimum membership is one hundred (100), failure to have ten (10) members at any annual meeting shall be prima-facie evidence of the non-existence of the association.

(b) All salaries, rents, or management fees paid by a private club to any person or legal entity must be reasonable and proper compensation under the circumstances.

(c) No private club shall dispense alcoholic beverage on the premises of the club to any person other than a bona fide member of the club or a bona fide guest of a member of the club. Alcoholic beverages should not be served in an area to which the general public is admitted. If the club's bar area is in a separate room from that to which the general public is admitted and admission to the bar is limited to members of the club and their guests, the bar may remain open. If, however, the bar is in the room to which the general public is admitted, no alcoholic beverages are to be served in that room during the time the general public is present.

(d) The Alcoholic Beverage Commission shall determine whether a club exists exclusively for non-profit purposes. No such license shall be issued where the ABC determines that the purpose is to make a profit.

(e) Violation of any of the rules set out herein may, in the judgment of the ABC, result in the suspension or revocation of the club's license or the imposition of a fine under the rules of the Commission. These rules are in addition to the other rules of the ABC and shall apply to club licensees only.

(f) Whenever membership in the club drops below one hundred (100), the club ceases to have facilities in which to serve its members or guests, or the club discontinues its operations, it shall surrender its license immediately.

(g) No private club licensed by the Commission shall utilize any name other than the name approved by the Commission and appearing on the club's license. Use of a d/b/a name is prohibited.

Authority: T.C.A. §§ 57-1-209, 57-3-104, 57-4-102 and 57-4-201~~; 1980 Tennessee Public Acts, Chapter 895~~.

0100-01-.06 Additional Rules Applicable To Caterers.

(1) Commission licensed caterers shall have available for inspection at catered events involving the sale or dispersion of alcoholic beverages by that caterer, its catering license or a copy as issued by the Commission.

(2) Only employees of a licensed caterer who are in possession of a valid server's permit may serve alcoholic beverages at any event, whether at the caterer's designated premises or a remote venue.

(3) Commission licensed caterers may only sell alcoholic beverages on a by-the-drink basis, collecting appropriate taxes, and only in cities, municipalities, and/or counties where such sales are authorized.

(4) No Commission licensed caterer may provide only alcohol without food items present and available for consumption at any catered event.

(5) Commission licensed caterers must provide and the Commission must receive at its Nashville office, a written and/or electronic notice of any catered event involving the sale or distribution of alcohol. Such notice must be provided by the caterer and received by the Commission at least two (2) full business days prior to the event during state working hours, prevailing time. Such notice shall include the date of the event, the address of the event, the host of the event, and the time of the event.

(6) If a Commission licensed caterer is providing and selling the alcohol at a catered event, then all proceeds generated from the sale of alcoholic beverages at the catered event shall be deposited into the caterer's monetary account(s). No third party shall receive any proceeds from the sale of alcoholic beverages at a catered event.

(7) Alcohol may be transported by the caterer to the premises of the catered event no earlier than 8:00 am. At the conclusion of the catered event, all alcohol must be removed from the premises no later than 12:00 p.m. of the following day. No one other than the licensed caterer or its employees may serve, sell, or otherwise dispense, and/or have access to any alcohol on the premises of the catered event.

(8) During the duration of the catered event, the licensed caterer is responsible and liable for full compliance with all laws of Tennessee, Commission rules and regulations, federal statutes, and ordinances and laws of the municipality and/or county where licensed premises are located at all times.

Authority: T.C.A. §§ 57-1-209, 57-3-104, 57-4-101, 57-4-102 and 57-4-201.

0100-01-.07 Applications For Special Occasion Permits.

(1) Special Occasion Permits are a one-day (1) permit allowing the sale, service, and/or otherwise dispensing of alcoholic beverages at specifically designated areas by certain qualified entities and are subject to the laws governing the consumption of alcoholic beverages. Special Occasion Permits are required if an entity does not otherwise hold an on-premise consumption liquor license, and/or if the entity is selling, serving, or otherwise dispensing alcoholic beverages to the general public. A special occasion permit is also required if the entity is selling alcoholic beverages to invited guests only.

(2) To obtain a special occasion permit, the following documents must be submitted to the Commission at least two (2) calendar weeks prior to the date of the event:

(a) A completed and notarized application;

(b) Certification of recognition of 501(c) status from the IRS, and/or financial records for two (2) years preceding the date of the application indicating that at least sixty percent (60%) of the gross revenues have been used exclusively for religious, educational, or charitable purposes;

(c) If the applicant is a bona fide political organization, then the applicant will submit documentation that it is either a political campaign committee as defined at T.C.A. § 2-10-102(a) or that it is a political party as defined at T.C.A. § 2-13-101;

(d) Proof that the applicant is registered with the Secretary of State's Office as a charitable, non-profit organization;

(e) Application fee;

(f) Letter of permission from the owner of the property where the event will be held granting permission to the applicant to sell or serve alcoholic beverages on its premises; and

(g) Any other documentation that the Commission may request.

(3) All proceeds generated from the sale of alcoholic beverages pursuant to the special occasion permit must be deposited into the special occasion permittee's monetary account(s).

(4) Special occasion permittees shall be responsible for complying with state statutes, rules and regulations related to the sale of alcoholic beverages to minors, the sale of alcoholic beverages to visibly intoxicated persons, and/or the sale of alcoholic beverages by the bottle.

Authority: T.C.A. §§ 57-1-209, 57-3-104, 57-4-101, 57-4-102 and 57-4-201.

0100-01-.08 TERMINAL BUILDING OF A COMMERCIAL AIR CARRIER.

(1) Hours of Sale. Notwithstanding subsection 0100-01-.03(2), any establishment that holds a license as a terminal building of a commercial air carrier airport under Tenn. Code Ann. §57- 4-102(36), any establishment that holds a license as a commercial airline travel club under Tenn. Code Ann. § 57-4-102(10), or a concessionaire that holds a liquor-by-the-drink license and is located in a terminal building of a commercial air carrier airport, shall be permitted to allow alcoholic or malt beverages to be consumed and/or sold on the licensed premises during the hours that the terminal building of the commercial carrier airport is open to the public, unless the local jurisdiction has opted out of these expanded hours.

(2) Privilege Tax. Establishment, as the term is used in Tenn. Code Ann. § 57-4-301(b)(1)(L), shall mean the license holder. Only one license fee or privilege tax shall be due from each holder of a license for a terminal building of a commercial air carrier airport, regardless of the number of points of sale the entity may operate under the license.

(3) Establishment.

(a) A terminal building of a commercial air carrier airport license may be issued either to the entity having contractual, jurisdictional or other such authority to operate the airport, or, in the entity's discretion, to another entity or entities as are contractually authorized to operate within the airport. All such entities shall be considered an establishment for purposes of Tenn. Code Ann. § 57-4-301(b)(1)(L) and shall file an addendum with each renewal application identifying each point of sale within the

airport.

(b) The holder of a license for a terminal building of a commercial air carrier airport may contractually authorize a separate entity to operate under the terminal building of a commercial air carrier airport license, and such contractually authorized entity shall not be required to obtain its own license; provided that prior notice and disclosures shall be given to the commission, on such forms or in such manner as may be prescribed by the commission. The license holder shall ultimately be responsible for any violation or sanction issued by the commission.

(4) Enforcement. The commission may, in its discretion, treat each point of sale at the terminal building of a commercial air carrier separately for enforcement purposes.

Authority: *T.C.A. §§ 57-3-204(i), 57-4-101, 57-4-102, 57-4-201, 57-4-203, and 57-4-301.*

DRAFT

Chapter 0100-03 Local Option Liquor Rules is amended by deleting the chapter in its entirety and by substituting instead the following language:

RULES OF TENNESSEE ALCOHOL BEVERAGE COMMISSION CHAPTER

CHAPTER 0100-03 LOCAL OPTION LIQUOR RULES

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0100-03-.01 Advertising of ~~Distilled Spirits in Newspapers, Magazines, or Similar Publications~~ Alcoholic Beverages Generally.

(1) Statements Prohibited in Advertisements of ~~Distilled Spirits in Newspapers, Magazines, or Other Publications~~ Alcoholic Beverages.

(a) Restrictions. An advertisement shall not contain:

1. Any statement that is materially false or misleading ~~in any material particular~~.

2. Any statement that is disparaging of a competitor's products.

3. Any statement, design, device, or representation which is obscene or indecent.

4. Any statement, design, device, or representation of or relating to analysis, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

5. Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.

6. Any statement that the product is produced, blended, made, bottled, packed, or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state, or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(b) Statements Inconsistent with Labeling. No advertisement shall contain any statement concerning a brand or lot of ~~distilled spirits~~ alcoholic beverages that is inconsistent with any statement on the labeling thereof.

(c) Curative and Therapeutic Effects. No advertisement shall contain any statement, design, or device representing that the use of ~~distilled spirits~~ alcoholic beverages has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(d) Place of Origin. No advertisement shall represent that the ~~distilled spirits~~ alcoholic beverages were manufactured in, or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(e) Flags, Seals, Coats of Arms, Crests, and Other Insignia. No advertisement shall contain:

1. ~~any~~ Any statement, design, devices, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, any state flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States if including such statement, design, devices, or pictorial representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, used by, produced for, under the supervision of, or in accordance with the specifications of the government or armed forces; ~~nor shall any advertisement contain~~ or

2. ~~any~~ Any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, if including such flag, emblem, seal, coat of arms, crest, insignia, or decoration is likely to falsely lead the consumer to believe that the product has been endorsed, made, used by, produced for, under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(2) Prior Approval. Advertisements conforming to the foregoing provisions need not have prior approval of the Commission before publication.

(3) Advertising by Licensees and Permittees.

(a) Advertising by ~~a person or other legal entity licensed as a wholesaler or retailer~~ any licensee or permittee shall be allowed on the internet, or any other computer-accessed communication; however, such advertisement shall be subject to ~~TABC Rules 0100-03-.01 and 0100-03-.02~~ Rule 0100-03-.01 and Rule 0100-03-.03.

(b) ~~Wholesalers and retailers~~ Any licensee or permittee under Title 57 of Tennessee Code Annotated may develop e-mail or other computer-access communication mailing lists, and may respond by electronic mail or other computerized communication (including, but

not limited to, mobile devices and electronic communications via social media) to any party making inquiry by providing information regarding an alcoholic beverages or any other products or services which may be sold or provided in accordance with laws, rules, and regulations of the State of Tennessee. ~~No retailer shall authorize or send any unsolicited electronic mail to a consumer.~~

(c) Manufacturers, importers, non-resident sellers, non-manufacturer non-resident sellers, wholesalers, or any representative thereof, may place posts or messages on social media to identify to consumers the retail locations where the industry member's product may be purchased at retail in the manner specified in Rule 0100-06-.03(4).

~~(c)~~(d) Licensees and permittees engaged in internet advertising ~~may~~ shall not directly or indirectly falsely identify ~~itself~~ themselves in any advertising or in domain addresses. ~~Further, such licensee must submit to the Commission the exact "web site" or domain address it intends to use prior to beginning the advertising.~~

Authority: T.C.A. §§ ~~57-818, and 57-1-203,~~ 57-3-104, and 57-4-201.

0100-03-.02 Reserved ~~Advertising of Wine in Newspapers, Magazines or Similar Publications.~~

~~(1) Prohibited Statements.~~

~~(a) Restrictions. An advertisement shall not contain:~~

~~1. Any statement that is false or misleading in any material particular.~~

~~2. Any statement that is disparaging of a competitor's products.~~

~~3. Any statement, design, device, or representation which is obscene or indecent.~~

~~4. Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.~~

~~5. Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.~~

~~6. Any statement that the product is produced blended, made, bottled, packed, or sold under, or in accordance with, any authorization, law or regulations of any municipality, county, or State, Federal, or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, State, or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.~~

~~(b) Statements Inconsistent with Labeling. No advertisement shall contain any statement concerning brand or lot of wine that is inconsistent with any statement on the labeling thereof.~~

~~(c) Curative and Therapeutic Effects. No advertisement shall contain any statement, design or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.~~

~~(d) Place or Origin. No advertisement shall represent that the wine was manufactured in, or imported from, a place or country other than that of the actual origin, or was produced or processed by one who was not in fact and actual producer or processor.~~

~~(e) Flags, Seals, Coats of Arms, Crests, and other Insignia. No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to, the armed forces of the United States, or of the American flag, any State flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor shall any advertisement contain any statement, device design, or pictorial representation of or concerning any flag, seal, coat of arms, crests, or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, code of arms, crest or insignia is associated.~~

~~(2) Prior Approval. Advertisements conforming to the foregoing provisions need not have prior approval by the Commission before publication.~~

~~Authority: T.C.A. § 57-1-209.~~

0100-03-.03 Advertising of ~~Distilled Spirits~~ Alcholic Beverages and Wine by Direct ~~Mail~~ Communications.

(1) Brands ~~Only~~. Manufacturers, importers, non-resident sellers, non-manufacturer non-resident sellers, and Tennessee licensed wholesalers of ~~distilled spirits~~ alcoholic beverages ~~and wines~~, or any representative thereof whose brands have been approved for distribution in Tennessee ~~and Tennessee-licensed wholesalers~~ may advertise brands ~~only~~ directly to consumers by ~~direct~~ mail and/or e-mail, internet, or any other computer-accessed communication (including, but not limited to, mobile devices and communications via social media); provided, however, measures are taken to prevent such communications from targeting individuals under the age of twenty-one (21).

(2) Restrictions. Direct ~~mail~~ communications advertising must conform substantially, where applicable, with the provisions of Rule 0100-03-.01 ~~or 0100-03-.02~~ and in addition must not contain the name, address, or telephone number of any Tennessee-licensed wholesaler, retail food store, or retailer, other than the individual wholesaler, retail food store, or retailer that is directly responsible for sending the direct communication, and this extends to the return address on the envelope. ~~The prohibition of 0100-03-.07(1) is also applicable.~~

(3) Retailer Advertising. Subject to the restrictions of ~~subsection~~ paragraphs (2) and (4) of this rule, a retailer licensed under T.C.A. § 57-3-204 may advertise ~~consumer education seminars, distilled spirits, wines and alcoholic beverages by direct mail to consumers in the form of a newsletter, catalogue or similar communications~~ any and all services and products the retailer is authorized to sell or provide under Title 57 of Tennessee Code Annotated or any rules and regulations adopted by the Commission in accordance therewith.

(4) Restrictions on Direct ~~Mail~~ Communications.

(a) A retail~~er~~ package store or retail food store may send a communication directly ~~mail or email a newsletter, catalogue, or similar communication only~~ to a consumer ~~who has requested to receive such communication in writing or via email~~, unless a consumer has made a request to the licensee to not receive such communication in writing or via e-mail.

~~(b) The written request or email of a consumer must be maintained in hard copy, scanned, or electronic format by the retailer to whom it is addressed and is valid until such written notification is received by the retailer from the consumer requesting withdrawal of his/her name from the direct mail listing.~~

~~(c) Each written request by a consumer must state the retailer to whom it is addressed and must include the date upon which it is signed by the consumer.~~

~~(d)~~(b) No ~~industry member~~ manufacturers, importers, non-resident sellers, non-manufacturer non-resident sellers, and Tennessee licensed wholesalers of alcoholic beverages may subsidize, contribute, or otherwise compensate a retailer, wholesaler, or retail food store for ~~such~~ any direct ~~mailing~~ communication advertising or otherwise assist, directly or indirectly, with the cost or preparation of any direct communication advertisement.

~~(e)~~(c) A retailer shall not be deemed to be in violation of this section unless it can be established that a consumer has made ~~at least one requests~~ a request to be removed from the mailing, ~~or~~ e-mail list, or other direct communication and such consumer continued to receive ~~mailings or e-mail~~ such communications after ~~thirty~~ fourteen (14) days following ~~the second~~ such a request.

(d) For any direct communications, measures must be taken to prevent such communications from targeting individuals under the age of twenty-one (21). Any direct communications must afford the consumer the ability to opt out of the communications.

(e) Each violation of this rule may result in suspension or revocation of a license or a fine not to exceed the statutory maximum.

Authority: T.C.A. §§ 57-1-209, ~~and~~ 57-3-104~~(c)(4)~~, and 57-4-201.

0100-03-.04 Reserved ~~Advertising of Distilled Spirits and Wine on Radio or Television by Manufacturers, Importers and wholesalers.~~

~~(1) Radio or Television Advertising. Manufacturers and importers of distilled spirits and wine and Tennessee licensed wholesalers and retailers may advertise via the radio or television.~~

~~(2) Restrictions. Such advertisements must comply with the provisions of 0100-03-.01(1) and 0100-03-.02(1).~~

~~(3) Wine Permitted But Restricted.~~

~~(a) Such advertisements must comply with the provisions of 0100-03-.02(1).~~

~~(b) Such advertisements must not give the name, address or telephone number of a Tennessee licensed wholesaler or retailer.~~

~~Authority: T.C.A. §§ 57-1-209, 57-3-104(c)(4) and 57-3-104(c)(9).~~

0100-03-.05 Advertising ~~Distilled Spirits and Wine~~ Alcoholic Beverages on Billboards and Outside Signs.

(1) Limited to Local Option Counties. Alcoholic beverages may be advertised on signs and billboards only in those counties which have legalized the off-premise or on-premise retail sale of such beverages under the provisions of T.C.A. § 57-3-106.

(2) Restrictions on Billboard and Outside Sign Advertising.

(a) No such sign or billboard shall contain the statements prohibited by Rule 0100-03-.01(1) ~~and 0100-03-02(1)~~.

(b) No such sign or billboard which bears a trademark, trade name, trade slogan, or a facsimile of a product, container, or display associated with a particular brand shall also bear the name or advertise the establishment or refer to the services of any wholesale or retail licensee of this state.

(c) No manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, wholesaler, or representative thereof, may directly or indirectly give, loan, or supply any retail licensee a sign of any nature bearing the name of the retail establishment or referring to its services in any manner, nor shall they cause such signs to be painted on exterior walls of the retail premises.

(d) Signs advertising brands ~~only~~ painted on the exterior walls of a retail licensee's establishment and paid for directly or indirectly by a manufacturer, importer, wholesaler, or representative thereof ~~shall not extend more than 18 inches beyond the body of the sign and no other painting of the exterior shall be furnished the retail licensee~~ are permitted.

(e) No manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, wholesaler, or representative thereof, shall directly or indirectly (through a sign company or advertising agency) pay, credit, or otherwise offer inducement of any nature to a retail licensee for the display of any sign or billboard or for the use of space involved therein, nor shall they reimburse the retailer for any expense incidental thereto. ~~No~~ A billboard or other structure for which a retail licensee is paid a rental or offered any inducement may not be used ~~as a billboard~~ for advertising alcoholic beverages.

(3) Local Control. Signs and billboards approved herein are subject to reasonable rules and regulations duly adopted by proper governing bodies in the county and city wherein located.

Authority: T.C.A. §§ ~~57-111, 57-818,~~ 57-1-209, ~~and~~ 57-3-104, 57-3-106 and 57-4-201.

0100-03-.06 Advertising Materials Within Retail Premises.

(1) Who May Supply and Install. Subject to the provisions of Rule 0100-06-.03 ~~of these regulations~~, manufacturers, ~~and~~ importers, non-resident sellers, and non-manufacturer non-resident sellers, or any representative thereof may give, rent, loan or sell to Tennessee licensed wholesalers, but to no other person, signs, posters, placards, decorations, employee clothing, devices, statuettes or geographic displays – printed, painted or electric – for point-of-sale brand advertising, provided such items include branding or advertising of products or brands directly controlled by the manufacturers, importers, non-resident sellers, non-manufacturer non-resident sellers, providing such items. Wholesalers may install or set up such materials in the windows or elsewhere in the interior of a retail establishment. Retailers may not give, rent, loan, or sell such material referenced above to a consumer.

(2) Restrictions on Advertising Within a Retail Premises.

(a) All advertising materials provided under paragraph (1) of this Rule ~~0100-03-.06(1)~~ must conform to Rule 0100-03-.01(1) ~~and Rule 0100-03-.02(1)~~, with the only exception being that such material may contain specific prices and statements of pecuniary appeal.

b) All such material must have the primary value to the retailer of brand advertising only. Brand advertisements must be an integral and not easily separable part of any material that has a secondary or utility value (such as change mats, calendars, thermometers, ash trays, lamps, bottle racks, etc.).

(3) Prohibitions.

(a) The practice of painting the interior of retail licensed premises under the guise of advertising is prohibited. Decorating with crepe paper, "Corabuff" matting, or similar material as a background or setting for advertising material only is permitted but such decoration is limited to a twenty (20) square foot area, per manufacturer, importer, non-

resident seller, non-manufacturer non-resident seller, wholesaler, or representative thereof.

(b) Except as permitted by the provisions of Rule 0100-06-.03, no manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, wholesaler, or representative thereof, shall give, rent, loan, or sell a retail license any fixtures, furnishings, or equipment of a permanent nature under the guise of advertising except as permitted by Rule 0100-06-.01, *et seq.*

(c) No manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, wholesaler, or representative thereof, shall directly or indirectly through an agent pay, credit, or otherwise offer any inducement whatsoever to the retailer for displaying such materials as authorized herein for any expenses incidental thereto.

~~(d) No manufacturer, importer, wholesaler or representative thereof, shall directly or indirectly through an agent pay, credit, otherwise offer any inducement whatsoever to the retailer for displaying such materials as authorized herein for any expenses incidental thereto.~~

Authority: T.C.A. §§ ~~57-818, and~~ 57-1-209, 57-3-104, and 57-4-201.

0100-03-.07 ~~Advertising Novelties and Specialties.~~ Authorized Products and Services by Retailers

(1) ~~Off-premise retailers licensed under T.C.A. § 57-3-204 may distribute to consumers only alcoholic beverages and those types of items specifically authorized under chapter 0100-06 of these regulations.~~ A retail licensee is permitted to advertise or sell at retail items related to or incidental to the use, consumption, dispensing, or storage of alcoholic beverages, together with merchandise and supplies related to special events or parties.

(2) The list of items a retail licensee may sell, contained in T.C.A. § 57-3-404(e)(4), is illustrative in nature and non-exclusive. The Commission shall have the right to specifically enumerate additional items it deems to be within the intent of the statute.

(3) A retail licensee may conduct demonstrations at any time of nonalcoholic products, both within the licensed premises and at locations outside of the licensed premises, without any restrictions and is not subject to any advertising restrictions of such demonstrations or other events occurring upon its premises or away from its premises, except as expressly set forth in Rules 0100-03-.01 through 0100-03-.08.

Authority: T.C.A. §§ ~~57-818, 57-1-201, and~~ ~~57-1-209,~~ 57-3-104, 57-3-202, and 57-3-404.

0100-03-.08 Advertising Approval Does Not Sanction Any Violation, Commission Discretion on Advertising.

(1) No Advertising Shall Indicate Any Violation Permitted. No advertising permitted herein shall imply sanction in any manner of any violation of the Tennessee Code, rules and regulations of the Commission, or valid ordinance of a duly constituted authority.

(2) Commission May Compel Discontinuance. The Commission reserves the right to instruct the discontinuance and withdrawal of any advertisement in any medium whatsoever which in its discretion, is determined to be inconsistent with the public interest.

Authority: T.C.A. §§ ~~57-818, and~~ 57-1-209, 57-3-104, and 57-4-201.

0100-03-.09 Licenses and Permits.

(1) Full-time Municipal Law Enforcement Department Required. No retail liquor license shall be granted for a location which is not situated within the jurisdiction of a regular full-time municipal law enforcement department or within a jurisdiction that has contracted with a regular full-time law enforcement department to provide services to the jurisdiction.

(2) Financial Disclosure.

(a) Applicants for retail liquor licenses shall submit, in conjunction with their application, proof of financial responsibility. Specifically required with each application are the following:

1. Financial statements containing financial information as requested by the Commission;

2. Loan agreements related to the licensed premises, the retail liquor operation, or any other interests in other liquor-related businesses owned by the applicant;

3. Gifts related to the licensed premises, the retail liquor operation, or any other interest in other liquor-related businesses owned by the applicant; and

4. Any other information requested by the Commission.

(b) The Commission may refuse to grant a retail liquor license to any applicant who fails to demonstrate, by a preponderance of the evidence, the financial ability and responsibility to reasonably conduct business.

(c) Upon renewal of an existing license the applicant for renewal need submit only the financial information as specifically requested by the Commission.

(3) Limit on Wholesalers' Licenses. No person, partnership, or corporation will be issued a wholesaler's license in more than one (1) municipality in the same county.

(4) Restriction on License After Surrender or Revocation.

(a) No ~~wholesale or retail~~ license will be issued to the spouse, child or children, son-in-law, daughter-in-law, or other person having any interest in the business of a licensee whose license has been revoked, for the privilege of doing business at the same location or in close proximity to the location of the establishment whose license was revoked for a period of one (1) year after said revocation. The Commission may, in its discretion, waive this prohibition.

(b) The Commission may refuse to reissue a license to the same person, firm, or corporation whose license has been revoked for one (1) year from the date of said revocation.

(c) The Commission may treat a surrender of a license as a revocation under the restrictions contained in this paragraph.

(5) Must Surrender License If Business Discontinued. Whenever any licensee discontinues business for any reason, he shall immediately notify the Commission in writing and surrender his license.

(6) Time Requirement to Commence Business. Approval, by the Commission, of the issuance of a new wholesaler's or retailer's license or the transfer of such a license to a different entity, shall automatically expire ninety (90) calendar days after such approval if the new license has not opened for business, unless a written request is received by the Commission for an extension of approval.

(7) Licensees Not Required To Have Permits. Persons whose names are listed on a ~~wholesale or~~

~~retail~~ license issued by the Commission are not required to obtain permits~~, and no such persons shall hold any permit issued by the Alcoholic Beverage Commission~~.

(8) Retail Licensees Not To Hold Federal Wholesale Stamp. No licensed retail liquor dealer shall purchase or have issued to him, nor may he possess, any federal liquor license, stamp, or permit without the corresponding state liquor license. Possession by any licensed retail liquor dealer of any such federal license, stamp, or permit without the corresponding state liquor license will be grounds for the revocation of his retail liquor license.

(9) Procedure for Off-Premise Retail License Application. Whenever any person has applied to the Alcoholic Beverage Commission for a license pursuant to T.C.A. § 57-3-204, except for an application for license renewal, the Commission may, at its discretion, conduct a hearing pursuant to the provisions of T.C.A. § 4-5-101 *et seq.* to determine whether the license shall be issued. The hearing may be held unless the applicant, municipality, or civil district wherein the applicant intends to conduct business and the Commission have stipulated in writing that no such hearing is necessary. However, when the municipality or civil district wherein the applicant intends to conduct business fails to grant or deny the certificate required by T.C.A. § 57-3-208 within sixty (60) days of the written application, the certificate is deemed to be granted, and further, the municipality or civil district is deemed to have stipulated that the hearing regarding the issuance of a license is not necessary.

~~(10)~~ ~~Public Notice. The Commission shall require each applicant for a new retail liquor license, pursuant to Chapter 3 of Title 57 of the Tennessee Code Annotated, to place a notice in a newspaper of general circulation in the area proposed to be served concerning the applicant's intent to seek a license from the Commission. The notice shall contain such information as is prescribed in Section (11) below and shall appear for at least three (3) consecutive issues immediately preceding the date that the applicant applies to the city or county for a certificate of compliance. The application shall be accompanied by a copy of the public notice and the sworn statement of the applicant that the notice was published in.~~

~~(11)~~ ~~Format of Notice.~~

~~(a)~~ ~~Anyone applying for a Tennessee retail liquor license shall place the following notice in a newspaper of general circulation.~~

~~RETAIL LIQUOR LICENSE NOTICE~~

~~Take notice that _____ (Name and address of applicant) has~~

~~applied to _____ (City or County) _____ for a certificate of compliance~~

~~and has or will apply to the Tennessee Alcoholic Beverage Commission at Nashville for a retail liquor license for a store to be named~~
~~_____ and to be located at~~
~~(Name of Store)~~

~~_____ and owned by~~
~~(Address of Store)~~

~~_____~~

~~(List whether individual, partnership, or corporation. List individual owners except if corporation.~~

~~list officers and manager.)~~

~~All persons wishing to be heard on the certificate of compliance may personally or through counsel appear or submit their views in writing at~~

~~_____~~

~~(Name of City or Government to issue certificate and address)~~

~~on _____ at _____. The Tennessee Alcoholic Beverage~~
~~(Date) (Time)~~

~~Commission will consider the application at a later date to be set by the Tennessee Alcoholic Beverage Commission in Nashville, Tennessee. Interested persons may personally or through counsel submit their views in writing by the hearing date to be scheduled by the TABC. (Rule 0100-03-.09, continued) Anyone with questions concerning this application or the laws relating to it may call or write the Alcoholic Beverage Commission at~~

~~_____.~~

~~(Address) (Phone)~~

~~(b) The title of the notice shall be all capital letters and at least 10 point size. The text of the notice shall be at least eight point size type, and the size of the entire notice shall be not less than two columns by two inches of newspaper space. Such newspaper notice shall be published prior to the issuance of the Certificate of Compliance.~~

Authority: T.C.A. §§ 57-1-201, 57-1-209, 57-3-104~~(c)(4), and~~ 57-3-208~~(e)~~, 57-4-201, ~~and~~ 57-3-203 and 57-3-204.

0100-03-.10 Transportation and Delivery of Alcoholic Beverages.

(1) Requirement For All Transporters. Any person transporting alcoholic beverages within, into, through, or from the State of Tennessee must comply with the provisions of T.C.A. § 57-3-403, ~~Tennessee Code Annotated~~ and shall, when requested by any representative of the Commission, or person having police authority, exhibit to such person the required bill of lading or other memorandum of shipment covering the cargo of the vehicle.

(2) Requirements for Tennessee-Licensed Wholesalers.

(a) Trucks and other motor vehicles owned or operated by wholesalers, when transporting alcoholic beverages, are forbidden to carry any other commodities of any nature, except those items specifically authorized by statute or Chapter 0100-06 of these ~~Regulations~~ Rules.

(b) All trucks and other motor vehicles owned or leased and operated by any Tennessee licenseed wholesaler, and used to transport, haul, deliver, or carry alcoholic beverages, shall have the name and address of such licensee printed on each side and on the rear of said truck or motor vehicle in legible letters of a minimum height as hereinafter prescribed. The name of the licensee shall be in letters not less than four (4) inches in height, the address of such licensee shall appear in letters of not less than two and one half (2 ½) inches in height and the license number shall appear in letters not less than one and one half (1 ½) inches in height. The following words, but no others, may be abbreviated: Tennessee (Tenn.), Company (Co.), and Incorporated (Inc.).

(c) Irrespective of any provision to the contrary contained within this regulation, a licensed wholesaler, a salesperson employed by a licensed wholesaler, or an employee of a wholesaler who has an active employee permit issued by the Commission, may transport and make deliveries of beverage alcohol in amounts less than twenty (20) cases in

vehicles which may or may not be owned or leased by the licensed wholesaler so long as the wholesaler, salesman, or employee possesses written documentation identifying the seller, purchaser, and the quantity and identity of products being delivered and so long as such delivery and transportation complies with the other transportation and delivery provisions of this regulation. Any wholesaler who authorizes such individual to transport in such a fashion shall be responsible for that individual's compliance with these rules.

(3) Wholesaler Must Deliver Off Premises. All alcoholic beverages sold by a wholesaler must be delivered away from his premises and then only to another licensed wholesaler, to a retailer or his employee at the retailer's licensed premises, to a retail food store or any employee of the retail food store at the retail food store's licensed premises, or to a Department of Defense Installation after compliance with T.C.A. § 57-3-110. Delivery to a wholesaler in another county must be by common carrier.

(4) Pickup By Retailer Prohibited. No retailer or his employees shall accept any alcoholic beverages at the wholesaler's premises or elsewhere other than at the licensed premises of the retailer.

(5) Transportation of Alcoholic Beverages by ~~Retailers~~ Retail Package Stores

~~(a)~~ ~~The sales of all alcoholic beverages by a retailer shall be made within the licensed premises; provided, that deliveries of alcoholic beverages sold within the premises may be made by the retailer only to a vehicle of the purchaser parked on the lot or lots upon which said licensed premises are situated or at the curb immediately adjacent to the lot or lots upon which said licensed premises are situated, and not elsewhere.~~

~~(b)~~ Where alcoholic beverages are desired to be transported for consumer educational seminars authorized by Rule 0100-03-.11(5), such transportation may be conducted by the wholesaler or retailer in accordance with the following provisions of this ~~section~~ subparagraph:

~~1.~~(a) The wholesaler or retailer shall transport alcoholic beverages directly to the location of the consumer educational seminar no more than twenty-four (24) hours prior to the time reported to the Commission for the start of the consumer educational seminar.

~~2.~~(b) All unsealed or otherwise opened containers of alcoholic beverages not consumed during the registered time of a consumer educational seminar shall be disposed of by removing opened container(s) and returning the product to the retail or wholesale premises. Such product, if returned to the retail licensee's premises, shall be documented as to its source and may only be used for employee training purposes. No sealed or unsealed containers of alcoholic beverages shall be given, sold, or otherwise transferred to persons attending a consumer educational seminar, to an on-premises consumption licensee, or to any other person.

~~3.~~(c) The wholesaler or retailer shall transport any unopened containers directly back to the licensed retail location within twenty-four (24) hours of the conclusion of the consumer educational seminar if the retailer purchased the alcohol. However, if the wholesaler donated the alcohol, then the wholesaler may, at its option, return such alcohol to its inventory or provide such alcohol to the retailer for use in employee training and not for resale.

~~4.~~(d) There shall accompany such alcoholic beverages at all times during transportation by the wholesaler or retailer as authorized herein, a copy of the written notification to the Commission regarding the consumer educational

seminar and a copy of the invoice. Further, any retailer transporting the alcohol to the approved seminar shall take a reasonably direct route from the location where the alcohol is obtained (either the wholesaler's licensed premises or the retailer's licensed premises) to the address of the consumer educational seminar approved by the Commission.

(6) Metric Net Contents.

(a) Distilled Spirits. The authorized standards of fill for distilled spirits shall be those container sizes authorized by 27 CFR § 5.47a.

(b) Wine. The authorized standards of fill for wine, as defined in 27 CFR § 24.10, shall be those container sizes authorized by 27 CFR § 4.72.

Authority: T.C.A. §§ ~~57-132, 57-136, 57-151, 57-818, 57-1-201,~~ 57-1-209, 57-3-104, ~~57-3-301, 57-3-303, 57-3-307,~~ ~~57-3-110,~~ ~~67-101 and 67-1-102,~~57-3-203, 57-3-218, 57-3-402, and 57-3-403.

0100-03-.11 Solicitation of Business, Services Restricted.

(1) Manufacturers and Importers Limited to Wholesale Solicitation.

(a) No manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or any representative thereof shall solicit orders in any manner for alcoholic beverages from anyone in the state except those holding wholesale licenses. The marketing, advertising, or promoting, or the encouraging of the public to purchase the manufacturer's, non-resident seller's, or non-manufacturer non-resident seller's product, does not constitute soliciting an order and does not require a permit.

(b) No manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or any representative thereof shall perform or provide any service whatsoever for a retail on-premise or off-premise licensee or his employee in the state, and no on-premise or off-premise licensee shall accept any service whatsoever, whether on or away from the retail premises—except as specifically authorized under Rules 0100-03-.06 and 0100-06-.03. ~~No manufacturer, importer or representative shall enter the premises of any retailer except in the main salesroom of said establishment.~~

(c) No manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or any representative thereof shall give anything of value whatsoever, including but not limited to alcoholic beverages and money, to any Tennessee retail on-premise or off-premise licensee or his employee, and no on-premise or off-premise licensee shall accept anything of value whether on or away from the retail premises except as specifically authorized under Rules 0100-03-.06 and 0100-06-.03.

(d) ~~Notwithstanding the restrictions contained herein, a~~ A manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative thereof may enter ~~the public and non-storage related areas~~ the premises of a retail licensee for the purpose of promoting the products manufactured, imported, or represented by the manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative, surveying or examining the retail and marketing operations of such on-premise or off-premise retail licensee or examining the advertising displays within the premises of such on-premise or off-premise retail licensee. Such manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative may also provide, orally or in writing, information related to such products to any licensee or employee of such licensee on the on-premise or off-premise retail licensee's premises as well as customers of the retail package store licensee in relation to tastings held under T.C.A. § 57-3-404(h)(2).

(e) ~~Notwithstanding the restrictions contained herein, a~~ A manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative thereof may, with the consent of the ~~retailer~~ retail package store, "face up" or dress a display of those products (and only those products) manufactured, imported, or represented by such person which displays are already established at such retail licensee premises and may arrange or rearrange those products manufactured, imported, or represented by such person which have been placed on display on the retail premises but is limited to "pulling forward" inventory already in the showroom and no restocking may occur from any area off the showroom floor. While providing such service, such person may not move, disturb, relocate, or re-shelve any product other than the products manufactured, imported, or represented by such person. No services of this kind may be provided to any retail food store licensee on or off their premises.

(2) Wholesale Sales Limited to Retailers.

(a) No wholesaler, salesman, or employee thereof shall solicit orders in any manner for alcoholic beverages from anyone in this state except those holding retail licenses.

(b) No wholesaler, salesman, or employee thereof shall provide any service whatsoever for a retail licensee or his employee whether within or away from the retail premises with the following exceptions:

1. Delivering alcoholic beverages or any item permitted under Chapter 0100-06 to the licensed premises.

2. Arranging stock delivered by his company in retail ~~establishments~~ package stores.

3. Setting up advertising signs or displays at retail package stores as set forth in Rules 0100-03-.05 and 0100-03-.06.

4. Assisting in the conduct of any retailer sponsored consumer educational seminar held in accordance with Rule 0100-03-.11(5).

5. Providing the services to retail food store licensees authorized by Chapter 443 of the Public Acts of 2017.

(c) No wholesaler, his salesman, or employee shall give anything of value whatsoever including, but not limited to, money and alcoholic beverages to any retail licensee or his employee except as otherwise permitted in these rules. No Tennessee retail licensee or his employee shall accept any alcoholic beverages, money, or other things of value except as allowed or provided for by the applicable regulations as set forth at Chapter 0100-06.

(d) Wholesalers are prohibited from accepting an order for alcoholic beverages from one retailer and delivering and invoicing part of the order to one retailer and the remainder of the order to another licensee. Retailers are prohibited from placing an order for one licensee, and having part of the order delivered to another licensee.

(e) Notwithstanding the limitations contained herein, a wholesaler, its salesman or its employees may solicit orders from any entity that has submitted to the Commission an application for license under T.C.A. §§ 57-3-204 or 57-4-101, but the wholesaler may not deliver any alcoholic beverages until the Commission has approved and issued such license.

(3) Complimentary Alcohol from Retailers ~~Shall Not Solicit at Residence or Place of Business of Consumer.~~

~~(a) No retail licensee or his employee shall solicit orders for alcoholic beverages by any method directed at the residence or place of business of a consumer any place in this State, other than as permitted by 0100-03-.03 or 0100-03-.04.~~

~~(b)~~ No retail package store licensee or his employee shall give any consumer ~~anything of value whatsoever except as provided in 0100-03-.07(2), and then only within the licensed premises or as may be permitted in Rule 0100-03-.11(5). Nothing herein shall prohibit a retail licensee from making withdrawals from inventory for donations to any organization that has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)). Upon request, retailers shall present documentation to the Commission agent or representative of such withdrawals~~ any complimentary alcohol except as provided in T.C.A. § 57-3-404 or this rule.

(4) Tax Laws Unaffected. No provision of this rule is intended to restrict or otherwise affect the deductions available to manufacturers, importers, wholesalers or retailers for purposes of calculating taxes due to the United States.

(5) ~~Retailer~~ Retail Package Store Sponsored ~~Tastings~~ Consumer Educational Seminars. A ~~retailer~~ retail package store licensed under T.C.A. § 57-3-204 may conduct consumer educational seminars, which may include providing alcoholic beverages and wine directly to consumers for tasting purposes. A retailer must provide to the Commission written notification on forms prescribed by the Commission if the licensee or its representative or employee is present to discuss the product being sampled, if the licensee is sponsoring or co-sponsoring the event, if the licensee has provided the product to be sampled, and/or if the licensee is soliciting orders at the event.

(a) No consumer educational seminar which includes the consumption of alcoholic beverages or wine by a consumer may occur at a premises licensed by the Tennessee Alcoholic Beverage Commission pursuant to T.C.A. § 57-3-204. (See T.C.A. § 57-3-406(f)). Further, consumer educational seminars must occur within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to T.C.A. §§ 57-3-106 and 57-4-103.

(b) Any retailer desiring to conduct a consumer educational seminar which involves the consumption of alcoholic beverages must provide written notification to the Commission disclosing the following information:

1. The date, time, and exact location of the consumer educational seminar;

2. The sponsors of such consumer educational seminar and any supplier or wholesaler involved, either directly or indirectly, with such consumer educational seminar;

3. Whether any fee or cost is assessed to the attendees in order to attend the consumer educational seminar, and if so, the amount of such fee; and

4. Any other relevant information as may be required by the Commission.

(c) Written or electronic notifications must be submitted to the Commission not less than ~~four (4)~~ two (2) calendar days prior to the date of the consumer educational seminar. Proof of such written notification shall be available for inspection at the event. ~~Upon approval, the Commission will issue a letter of permission to the retailer which will be valid for no longer than one 24-hour period, subject to the hours set forth in T.C.A. § 57-4-203(d)(1). Such~~

~~letter of permission must be available for inspection at the event.~~

~~(d)~~ ~~Failure to comply with the sub-paragraphs (b) and (c) above may result in a violation of this section.~~

~~(e)~~(d) No manufacturer, ~~or~~ non-resident seller, or non-manufacturer non-resident seller may directly supply any product to a retailer for use at a consumer educational seminar. Nothing herein shall prohibit a wholesaler licensed pursuant to T.C.A. § 57-3-203 from providing product to the retailer for use at a consumer educational seminar, nor shall this provision preclude a manufacturer or nonresident seller from providing product to a wholesaler with the intent that such product be used at a consumer educational seminar. A wholesaler who provides such product for an event should make a reasonable effort to provide a sufficient quantity of alcohol, but not in excess of the amount needed to conduct the consumer educational seminar. Any unopened salable product remaining at the conclusion of the seminar shall be returned to the wholesaler who provided the product if the product was donated for the event, pursuant to T.C.A. § 57-3-403 and Rules 0100-03-.14(1)~~(a)~~ and 0100-03-.10(5).

~~(f)~~(e) Any consumer educational seminar conducted under this ~~section~~ rule shall be conducted in accordance with the hour limitations set forth at T.C.A. § 57-4-203(d)(1).

~~(g)~~(f) A manufacturer, non-resident seller, non-manufacturer non-resident seller, retailer, wholesaler, or representative thereof whose products are to be tasted may advertise, in accordance with all other applicable regulations of the Commission, the date, time, location, sponsors, speakers, products to be tasted, food to be served, charge for attendance, and such other information as may be appropriate to inform the consumers of the consumer educational seminar. A retail location of a consumer educational seminar included in an industry member advertisement shall be relatively inconspicuous in relation to the advertisement as a whole.

(g) A manufacturer, non-resident seller, non-manufacturer non-resident seller, wholesaler, or representative thereof whose products are to be tasted may furnish consumer advertising specialties permitted under the rules directly to consumers, or to a retailer for distribution to consumers, at the consumer educational seminar.

(h) A consumer educational seminar conducted under this ~~section~~ rule may be conducted at any premises licensed pursuant to T.C.A. § 57-4-101. If so, a retailer may impose a reasonable charge for attendance at a the consumer educational seminar, ~~and~~ may solicit orders from consumers at the ~~tasting~~ seminars, provided that final sales of wines and alcoholic beverages must be completed within the licensed premises of the retail~~er~~ package store or delivered pursuant to Rule 100-03-.10(5)(a).

(i) ~~On-premise consumption licensee employees shall not serve, sell, or otherwise dispense any alcoholic beverages not owned outright by such licensee. Any retailer employee and/or representative serving, selling, or otherwise dispensing alcoholic beverages at a consumer education seminar must first obtain a server's permit and such permit must be available for inspection while the consumer education seminar is being conducted.~~ Individuals holding any permit issued by the Commission or certified clerks employed by retail package stores may serve or dispense alcoholic beverages. Nothing in this paragraph authorizes an on-premise consumption licensee to purchase and resell alcoholic beverages from any entity other than a licensed wholesaler. In addition, an individual listed as licensee or manager on the license application or in the records of the Commission may serve or dispense alcoholic beverages at such educational seminar.

(j) If a consumer educational seminar is to be conducted at a premises not licensed pursuant to T.C.A. § 57-4-101, the following additional conditions shall apply:

1. No food, goods or services may be purchased or sold and no solicitation of orders may occur.

2. No person may attend such consumer educational seminar unless such person has received a written invitation, addressed to the invitee.

3. No charge may be imposed upon such invitee for attendance or for any food or product consumed.

(k) The retail licensee shall be responsible for compliance with all statutes, rules, and regulations, including but not limited to the prohibitions of selling to a minor or to an intoxicated individual. Violations of any statutes, rules, or regulations may result in disciplinary action against the appropriate licensee.

Authority: T.C.A. §§ ~~57-818, and~~ 57-1-209, 57-3-104, 57-3-202, 57-3-203, 57-3-210, 57-3-404, 57-3-405, 57-3-604, and 57-3-815

0100-03-.12 Containers and Sizes.

(1) Original Retail Containers Required.

No licensee shall import into Tennessee or sell in Tennessee any alcoholic beverages, except ~~wine~~ as provided by T.C.A. § 57-3-404(e)(4)(E) or § 57-4-108, not in original retail containers.

~~(2)~~ ~~Wine May Be Imported In Bulk.~~

~~Tennessee-licensed wineries and wholesalers may import wine in bulk for the purpose of bottling only. When wine is imported hereunder, it shall be stored on the licensed premises only, in containers approved by the Commission which shall have the right in its discretion to seal such containers and require them to be opened only after notice to the Commission and with its consent.~~

~~(3)~~(2) Standards of Fill for Wine.

All wine bottled in, sold in, and shipped into this state shall be in containers specified in the Standards of Fill for Wine prescribed by the Department of the Treasury of the United States for wine shipped in interstate commerce; and, said Federal Regulations relating to Standards of Fill for Wine are hereby adopted and incorporated by reference herein. See Rule 0100-03-.10(6).

~~(4)~~(3) Distilled Spirits May Be Imported In Bulk

Tennessee-licensed manufacturers may import distilled spirits in bulk for the purpose of manufacturing, rectifying, or blending, except that distilled spirits imported in bulk from outside of the State of Tennessee shall not be used in the manufacturing, rectifying, or blending of Tennessee whiskeys as defined in T.C.A § 57-2-106. Such bulk shipments shall only be permitted in compliance with the rules and requirements of the Tobacco Tax and Trade Bureau ("TTB"). and T.C.A. § 57-3-202(f).

~~(5)~~(4) Standards of Fill for Distilled Spirits

All distilled spirits bottled in, sold in, and shipped into this state shall be in containers specified in the Standards of Fill for Distilled Spirits prescribed by the TTB for shipments of distilled spirits; and, said Federal Regulations relating to Standards of Fill for Distilled Spirits are hereby adopted and incorporated by reference herein. See Rule 0100-03-.10(6).

Authority: T.C.A. §§ ~~57-818, 57-1-201,~~ 57-1-209, 57-3-104, ~~57-1-209,~~ 57-3-202, 57-3-203, 57-3-207, ~~57-3-30~~57-3-218, 57-3-404, 57-4-201, and 57-4-108 ~~67-1-102, 57-3-303, 57-3-307 and 57-1-201~~.

0100-03-.13 Conduct of Business – Wholesaler and Retailer.

~~(1)~~ ~~Retail Licensees to Sell Nothing Except Alcoholic Beverages. No retailer or employee thereof shall store, sell or offer for sale on his licensed premises any article or commodity whatsoever except alcoholic beverages or otherwise provided by statute. However, a wholesaler may store, sell or offer for sale those items specifically authorized under T.C.A. §57-3-404 and Chapter 0100-06 of these regulations, and a retailer may store, display and distribute those items authorized under Chapter 0100-06 of these regulations.~~

~~(2)~~(1) All Licensees Must Keep Records Available Three (3) Years. Each licensee shall keep, for at least three (3) years, all purchase orders, invoices, and all other records of all purchases and sales of alcoholic beverages made by such licensee. All such orders, invoices, and all other books and records pertaining to the licensee's operation shall be open for inspection to any authorized representative of the Alcoholic Beverage Commission or Department of Revenue during business hours and failure to make such available shall be deemed cause for revocation of his license. For the purposes of this paragraph, electronic records are sufficient if they are readily available and easily accessible.

~~(3)~~(2) Business Management Restricted. Every licensed wholesale or retail business shall be managed by the holder of the license, if an individual, or by a partner or corporate officer, in the event that the business is operated by a partnership or corporation. In every case where alcoholic beverages at wholesale or retail are sold by a partnership or corporation, the managing partner or corporation officer in active control and management of the business shall be designated to the Commission.

~~(4)~~(3) Hours Licensees May Remain Open. Wholesalers and Retailers may remain open for business between the hours of 8:00 a.m. and 11:00 p.m. by the time zone and system in effect in the city where the store is located.

~~(5)~~(4) Storage Limited to Ground Floor of Licensed Premises. No wholesaler or retailer shall store alcoholic beverages at any place other than the ground floor constituting his licensed premises without written permission of the Commission.

~~(6)~~(5) No Wholesaler May Store for Retailer. No wholesaler shall store alcoholic beverages for a retail dealer without written approval of the Commission.

~~(7)~~(6) No Retailer May Store for Another Retailer. No retailer shall store alcoholic beverages belonging to another retail licensee.

~~(8)~~ ~~"Lugs" Prohibited-Pre-Sacking Restricted.~~

~~(a)~~ ~~No bottles of alcoholic beverages shall be removed from the delivery case and wrapped into packages for the purposes of resale commonly known as "lugs" on the premises of a licensed wholesaler or retailer, except a packaged "less than case" order delivered by a wholesaler to a retailer will not be construed as a "lug" if accompanied by an invoice. Retailers shall not sell alcoholic beverages to or pre-package alcoholic beverages for bootleggers.~~

~~(b)~~ ~~Any such "lug" found on the premises of a retailer or wholesaler shall be prima facie evidence of a violation of this regulation.~~

~~(c)~~ ~~No licensed retailer shall have on hand, in stock or stored in his possession, any alcoholic beverages that have been pre-sacked prior to the actual receipt by such retailer~~

~~of a specific order therefore. However, notwithstanding the provisions of this paragraph, nothing shall preclude a retailer from pre-sacking an order for personal consumption after being requested to do so by a consumer.~~

(7) A retailer shall not sell alcoholic beverages to an individual whom the retailer should reasonably believe is reselling such alcoholic beverages not permitted by law.

~~(9)~~(8) Contests Involving Alcoholic Beverages Prohibited. No manufacturer, wholesaler, non-resident seller, non-manufacturer non-resident seller, retailer, or representative or employee thereof may:

(a) Sponsor or conduct a contest in which alcoholic beverages are offered as prizes, premiums, or rewards;

(b) Offer as a prize, premium, or reward any alcoholic beverages; or

(c) Directly or indirectly aid or assist in the promotion of a contest involving alcoholic beverages which is conducted or sponsored by any person not a licensee.

(d) Notwithstanding the foregoing, a manufacturer, wholesaler, non-resident seller, non-manufacturer non-resident seller, or retailer may sponsor or conduct a contest in which alcoholic beverages are offered as prizes, premiums, or rewards for their own employees.

~~(10)~~(9) Gift Certificates. Tennessee-licensed retailers may sell gift certificates or gift cards to consumers. ~~However, no gift certificate shall be honored, accepted, or sold to anyone under the age of twenty-one or to anyone visibly intoxicated. If a gift certificate is honored, accepted, or sold to anyone under the age of twenty-one (21) or to anyone visibly intoxicated, then such practice will be deemed to be the equivalent of selling alcohol to a minor or selling alcohol to a person visibly intoxicated.~~ No gift card shall be honored, accepted, or sold to anyone visibly intoxicated. No gift card shall be honored or accepted from anyone under the age of twenty-one (21) for the purchase of alcoholic beverages or beer. Such practices will be deemed to be a violation.

~~(11)~~(10) Refusal of Cooperation. Any licensee who refuses to open or disclose records to, or furnish information to, or who furnishes false and/or misleading information to an agent of the Tennessee Alcoholic Beverage Commission upon any matter relating to or arising out of the conduct of the licensed premises shall subject the license to revocation or suspension.

~~(12)~~(11) Open Access to Licensed Premises Without Warrant. Immediate access, without a warrant, to all parts of a licensed premise shall at all times be accorded agents or representatives of the Tennessee Alcoholic Beverage Commission.

~~(13)~~(12) Licensee Responsible For Law and Order On Licensed Premises. Each licensee shall maintain his establishment in a decent, orderly, and respectable manner in full compliance with all laws of Tennessee and ordinances and laws of the municipality and/or county where licensed premises are located at all times.

~~(14)~~(13) Not withstanding any provisions herein, a retailer may accept a tentative order for alcoholic beverages from consumers by telephone, e-mail, facsimile transmission, or other electronic means, provided, however~~:~~

~~(a)~~ ,~~t~~The retailer maintains a record, written or electronic, of the items tentatively ordered for a period of thirty (30) days following the actual purchase of the items~~; and~~.

~~(b) The sale and delivery of any such tentative order shall occur on the license premises in a face-to-face purchase~~

(14) A retail package store may sell or deliver alcoholic beverages or supply, deliver, and install products authorized to be sold by the retailer pursuant to T.C.A. § 57-3-406(j).

(15) Any government-issued document that has expired shall not be deemed to be "valid" for purposes of T.C.A. § 57-3-406(d), and as such, a retailer may not sell alcoholic beverages to a person who has not provided an unexpired government-issued document that meets the requirements of T.C.A. § 57-3-406(d).

Authority: T.C.A. §§ ~~57-109(g), (1) and (3), 57-818(2),~~ 67-101, ~~57-132, 57-136, 57-1-201,~~ 57-1-209, 57-3-104~~(c)(4),~~ 57-3-202, 57-3-203, 57-3-404, 57-4-108, and 57-3-406~~(d)~~.

0100-03-.14 Conduct of Business of Wholesalers.

(1) Wholesaler Accountable for Inventory; Methods of Disposition of Alcoholic Beverage Limited. A wholesaler is strictly accountable for his inventory which he may deplete in the following manners only:

(a) Sales to a licensed retailer and to no other person and each sale and delivery must be covered by an invoice.

(b) Wholesalers may deplete inventories for personal or training use, for purposes of contributing to a charitable organization, for marketing, or for use at educational seminars held pursuant to Rule 0100-03-.11 or held for the benefit of retailer customers of the wholesaler. The wholesaler shall retain records of all such withdrawals showing the amount of inventory withdrawn, the purpose of the withdrawal and the employee responsible for such withdrawal. These records shall be retained in accordance with Rule 0100-03-.13(12).

(c) Broken and deteriorated merchandise (method of handling set forth in Rule 0100-03-.14~~15~~(3)).

(d) Courtesy sales from one wholesaler to another within the state.

(e) Returned merchandise to the manufacturer or importer.

(2) Consignment and Returns.

(a) No wholesaler shall sell and no retailer shall accept any alcoholic beverage on consignment, or upon condition, or with the privilege of return, or on any condition other than a bona fide sale, except as may be permitted pursuant to Chapter 0100-06.

(b) Novelty containers, commonly known as Christmas decanters, must be accepted back upon request in exchange for similar quantity of alcoholic beverages of the same brand and proof in conventional containers by the wholesaler from the retailer and by the manufacturer from the wholesaler. Such requests shall not be submitted before January 15 next after the Christmas season for which such decanters were delivered.

(3) Breakage and Deteriorated Merchandise.

The following procedure shall be followed in handling and accounting for broken or deteriorated merchandise:

(a) Wholesalers shall return broken bottles or deteriorated merchandise from the retailer involved to his warehouse before replacing same with the retailer.

(b) Replacement shall be listed on the wholesaler's standard invoice and designated whether

breakage or deteriorated merchandise.

(c) The wholesaler shall prepare a standard invoice covering the breakage or deteriorated merchandise within his own stock on the date it is broken or the deteriorated merchandise is removed from his inventory.

(d) No later than the fifth (5th) day of the month each wholesaler shall prepare from invoices of the previous month a complete list of breakage and deteriorated merchandise. The list shall be prepared in triplicate and shall include the invoice number, retail license number (or wholesaler's license number), brand, and size.

(e) An agent of the Tennessee Alcoholic Beverage Commission shall use this list in checking and destroying broken bottles, and checking the deteriorated merchandise which he shall mark as unsaleable. The agent will certify all three (3) copies of the list and forward one (1) copy to the Commission. The wholesaler shall mail another copy to the Miscellaneous Tax Division of the Department of Revenue and retain the third (3rd) as a part of its records.

(f) After checking and marking, the wholesaler may dispose of the deteriorated merchandise without regard to the limitation established in Rule 0100-03-.16(1)(b) provided, however, the wholesaler will incur tax liability at the same time all such unsaleable alcoholic beverages are removed from inventory and not destroyed.

(4) Wholesaler Assistance at Special Occasion Events. A wholesaler or employee thereof may participate in, assist, and serve alcoholic beverages on behalf of a holder of special occasion permits issued pursuant to T.C.A. § 57-4-101(g).

Authority: T.C.A. §§ 57-1-209, 57-3-104~~(c)(4),67-1-102~~, ~~57-3-30~~57-3-203~~, 57-3-307~~, and 57-3-404~~Public Acts of 1974, Chapter 707, § 1~~.

0100-03-.15 Restrictions on Premises, Conduct of Business of Retailers.

(1) Retailers Not to Combine. No combination of retailers shall be permitted to purchase merchandise in the name of one (1) retailer and subsequently distribute merchandise which they have purchased in combination with each other to any one of the combination and no retailer shall be permitted to transfer goods from one to another. If any member of the combination is found to have violated this regulation, every member shall likewise be deemed to have violated this regulation, and it shall also be a violation for the wholesale distributor to furnish merchandise to any combination of retail dealers.

(2) Living Quarters Prohibited. No part of the licensed premises occupied by a liquor store shall be used as living quarters by any person.

~~(3) No Commodity Except Alcoholic Beverages May Be Stored. No part of a licensed premises occupied by a liquor store shall be used as a storeroom for any commodity having no relation to the sale of alcoholic beverages.~~

~~(4) Services Restricted. No retailer within or on his licensed premises shall offer by sign or otherwise to perform any service whatsoever for a consumer except the sale of alcoholic beverages.~~

~~(5)~~(3) Drinking In or On Premises Prohibited. No retail licensee or his employee shall consume alcoholic beverages or permit alcoholic beverages to be consumed within publicly accessible areas of the retail establishment. Employee-only tastings are authorized to be conducted on the retail premises as authorized by T.C.A. § 57-3-404(h). Alcoholic beverages used for employee-only tastings/education must be properly identified as such and proper documentation from the wholesaler must be maintained on the premises. Notwithstanding this provision, all open alcohol

being used for employee tastings/education must be removed within seven (7) days of the wholesaler documentation. No licensee or his employee shall engage in the sale of alcoholic beverages on the licensed premises while under the influence of intoxicants or drugs.

(4) Notwithstanding paragraph (3) of this rule, a retail package store may conduct tastings pursuant to T.C.A. § 57-3-404(h).

~~(6)~~(5) Operation of a Licensee. Every retail licensee shall register and designate on its application one or more persons as managers of the retail operation. All managers of retail licensees shall submit to the Alcoholic Beverage Commission a completed questionnaire within one (1) week of assuming such duties. Such person may be the licensee, if the licensee is an individual. The designated manager or managers of the licensee shall be either the owner or a full-time employee of the licensee and shall not be an employee of any other licensee nor shall such be a consultant, advisor, or provide any services to any other licensee. Only the licensee, if an individual, or the designated manager or managers may engage in any of the following activities:

(a) Select, order, or price inventory,

(b) Employ or discharge the employees of the retail establishment,

(c) Approve advertising, marketing programs of the licensee.

Authority: ~~(1) and (3) -~~ T.C.A. ~~§ 57-818; (2) -~~ §§ ~~67-101, 57-132, 57-136,~~ 57-1-209, 57-3-104, 57-3-204, 57-3-212, 57-3-221 and 57-3-404 and Public Acts of 1974, Chapter 707, § 1~~.

0100-03-.16 Dual Interests Prohibited.

(1) Manufacturer, ~~and~~ Importer, Non-Resident Seller, and Non-manufacturer Non-Resident Seller.

(a) No manufacturer~~, or importer,~~ or representative of the same~~,~~ shall have any kind of direct or indirect interest ~~financial, fixtures, furnishings, stock ownership, loans, gifts, securing loans, guaranteeing payment of any loan, lease of property or participate in the profits, either directly or indirectly,~~ in any wholesaler or any retail on-premise or off-premise ~~liquor~~ establishment in Tennessee. A prohibited interest includes the possessing of any financial or other interest in the establishment, providing or having interest in any fixtures or furnishings, stock ownership, loans, gifts, the securing of loans, the guaranteeing of any loan payment, or participating in the profits.

(b) No importer, non-resident seller, non-manufacturer non-resident seller, or representative of the same shall have any kind of direct or indirect interest in any retail on-premise or off-premise establishment in Tennessee. A prohibited interest includes the possessing of any financial or other interest in the establishment, providing or having interest in any fixtures or furnishings, stock ownership, loans, gifts, the securing of loans, the guaranteeing of any loan payment, or participating in the profits.

(c) An importer, non-resident seller, non-manufacturer non-resident seller, or representative of the same may have a direct or indirect interest in a wholesaler.

(d) "Indirect interest" as used in this Rule means any kind of interest in the wholesaler, retail on-premise, or retail off-premise establishment by way of stock ownership, loan, partner's interest, or control, including the use of a brand name, trademark, or sponsorship of the, manufacturer wholesaler, importer, non-resident seller, non-manufacturer non-resident seller, or representative of the same.

(e) "Direct or indirect interest" between 1) a manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative of the same and 2) an on-premise

establishment does not include:

1. An interest held by a spouse or child over the age of twenty-one (21) as separate and distinct property; provided, that there is no commingling of assets or sharing of control in such arrangement;

2. An interest of a person or entity having less than a five percent (5%) ownership interest in a manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or on-premise establishment; or

3. An interest held in an irrevocable trust by an independent trustee.

(2) Wholesaler ~~or~~ and Retailer.

No wholesaler, and no partner, member, or person owning stock in a corporation licensed as a wholesaler, and no employee of same, shall have any interest ~~as set forth above~~ in any business licensed as an on-premise or off-premise retailer, and no retailer and no retailer's employee, shall have any such interest in any wholesale establishment. A prohibited interest includes the possessing of any financial or other interest in the establishment, providing or having interest in any fixtures or furnishings, stock ownership, loans, gifts, the securing of loans, the guaranteeing of any loan payment, or participating in the profits.

Authority: T.C.A. §§ ~~57-818, and~~ 57-1-209, 57-3-104, 57-3-210, 57-3-604, 57-4-201, Chapter 968, Public Acts of 2012, and Chapter 371, Public Acts of 2017.

0100-03-.17 Responsibility and Penalties for Violations.

(1) Employer Responsible for Employee's Action. Licensees are at all times responsible for the conduct of their businesses and are at all times directly responsible for any act or conduct of any employee which is in violation of the laws of Tennessee, the rules and regulations of the Commission, any local ordinance and/or any federal statute, ~~or the rules and regulations of the Commission,~~ whether the licensee be present at any such time or not. ~~This section is defined to mean that~~ Any unlawful, unauthorized, or prohibited act on the part of an agent or employee shall be construed as the act of the employer, and the employer shall be ~~proceeded against~~ liable as though he were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the employer's direction and with his knowledge. Notwithstanding this provision, a licensee may present mitigating factors.

(2) In Disciplinary Action. In disciplinary proceedings, it shall be no defense that an employee or agent of a licensee acted contrary to order, or that a licensee did not personally participate in the violating action or actions – except as permitted under Rule 0100-05-.07.

(3) Avoidance of Tax Liability. Any manufacturer, importer, or representative of the same, and any wholesaler or retailer or employee of the same, who shall evade, or render direct or indirect assistance in the evasion of, the payment of the taxes imposed in T.C.A. §§ 57-3-302, 57-3-303, 57-4-301, and 57-6-201, or who shall violate, in any manner aid or abet, participate in any scheme to violate the local option law, or fail or neglect to comply with any regulations here in ~~before set out~~, shall be deemed to have given cause for suspension or revocation of his license, or permit, or if holding no license or permit, to have given cause for withdrawal or suspension of any privilege granted in Tennessee~~, as~~ by the Commission in its discretion.

Authority: T.C.A. §§ ~~57-818, 57-1-201, and~~ 57-1-209, 57-3-104, ~~to implement T.C.A. §§~~ 57-3-302, ~~and~~ 57-3-303, and 57-4-201.

0100-03-.18 Transfer of Licenses.

(1) The transfer of a retail liquor license from one location to another shall be subject to the following provisions:

(a) The new location must be within the same city as the original location.

(b) The application for transfer must pay or must have paid the full annual license fee for the year in which the transfer is requested.

(c) The physical transfer of the store must be completed within ninety (90) days after the transfer is granted. Under exceptional and unusual circumstances, the applicant may request an additional thirty (30) days' time. However, the request must be made in writing and must state the reasons for the extension. Such request must be submitted to the Commission prior to the aforementioned ninetieth (90th) day.

(d) The approval of all applications for the transfer of a retail liquor license shall be within the discretion of the Alcoholic Beverage Commission.

(e) Circumstances which may be considered by the Commission include:

1. Physical destruction of the premises not the fault of the licensee.

2. Bona fide termination of the lease, with the remaining term of the lease not to exceed one (1) year from the date the transfer is considered by the Commission.

(i) Accompanying each application for transfer shall be a sworn statement by the applicant declaring the reason for the lease termination.

(ii) If the applicant for transfer is purchasing the property for the proposed new location, then the appropriate documents shall be submitted with the application evidencing the purchase.

(iii) If the applicant for transfer is building a new structure for the proposed new location, the structure's blue prints or other building plans shall be submitted with the application.

3. Eminent domain or condemnation proceeding causing serious disruption of the business.

4. Substantial changes in traffic patterns surrounding the existing store.

5. Situations, which in the discretion of the Commission, are determined to be a material change of circumstances.

(f) The application for a transfer of a retail liquor license shall follow the procedural requirements prescribed for applications for new licenses contained in Rule 0100-03-.09(9).

(g) The proposed new location must comply with such statutes, regulations, and ordinances for new licenses as are determined to be applicable and material in the discretion of the Commission.

Authority: T.C.A. §§ ~~57-818,~~ 57-1-209, 57-3-104~~(c)(4)~~, 57-3-212, and 57-4-201~~(a)(2)~~.

0100-03-.19 ~~Repealed.~~ Manufacturer Representative Permits.

(1) A manufacturer representative permit issued pursuant to T.C.A. § 57-3-202(d) is only required for

owners, officers, employees, or representatives soliciting orders from licensed wholesalers in Tennessee and shall not be required of owners, officers, employees, or representatives that are marketing and promoting the product to the general public or to situations described in T.C.A § 57-3-202(k)(3). In addition, a manufacturer representative permit is not required for individuals who work at a manufacturer's or importer's premises unless they also perform such other tasks that require such a permit.

(2) A manufacturer representative permit issued pursuant to T.C.A § 57-3-202(d) shall be issued exclusively to the individual applying for such permit and shall not reference any manufacturer, rectifier, or importer. Such permit belongs to the individual holding such permit and not to any manufacturer, rectifier, or importer.

Authority: T.C.A. § ~~57-818~~ 57-3-104 and 57-3-202.

0100-03-.20 ~~Repealed.~~ Donations to Nonprofit Organizations.

(1) Any licensee shall be permitted to make withdrawals from inventory for donations to any organization that has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) and that will serve or sell the donated products at a special occasion licensed event. A donation may occur before a qualified entity receives a special occasion license from the Commission.

(2) Donations made pursuant to this rule may be delivered by the licensee to the recipient organization or may be picked up by the recipient organization at the licensees's premises.

(3) Licensee's making donations under this rule shall maintain adequate records of the donation, including the amount donated, the FEIN of the recipient organization, and a copy of the letter from the IRS granting exempt status to such recipient organization received by the licensee from recipient organization. Upon request, licensees shall present documentation to the Commission of such withdrawals.

(4) Licensees making donations under this rule are responsible for paying all required state and federal taxes for the donated product. Failure to do so could lead to suspension, revocation, or a fine not to exceed the statutory maximum.

Authority: T.C.A. § ~~57-818 to implement T.C.A. §§ 57-131, 57-132, 57-701 through 57-707 and 57-1-209~~ 57-3-104, 57-3-303, 57-4-201, and Chapter 147, Public Acts of 2017.

0100-03-.21 ~~Repealed.~~ Noncontiguous Premises of Manufacturers.

(1) A manufacturer licensed under T.C.A § 57-3-202 shall be permitted to have a noncontiguous area for storage of spirits as long as such noncontiguous premises have been authorized by the United States Alcohol and Tobacco Tax and Trade Bureau ("TTB").

(2) No application or application fee is required to establish this noncontiguous premises with the Commission and only the basic details of the location and a floor plan of such noncontiguous premises are required in addition to a copy of proof of TTB approval.

(3) Manufacturers shall notify the Commission within thirty (30) days after commencing use of this noncontiguous premises, or sooner if preferred by the manufacturer.

Authority: T.C.A. §§ ~~57-1-209~~,57-2-104, 57-3-104~~(c)(4), 57-2-104~~, and ~~57-4-201(a)(2)~~ 57-3-202.

0100-03-.22 Private Events

A license or permit is not required for an event where alcoholic beverages are served if:

(1) The event is private and includes a bona fide guest list restricting access to invited guests only;

(2) The hosts or bona fide guests of the event are providing all of the alcoholic beverages;

(3) All alcoholic beverages are served without charge;

(4) There is no admission cost for the event, including ticket price, required donation, or door charge; and

(5) There is no commercial purpose related to the sale, marketing, or promotion of alcoholic beverages for the private party or event.

Authority: T.C.A. §§ 57-3-104, 57-4-101, 57-4-201, Public Chapter 147, Public Acts of 2017.

0100-03-.23 Rectifying

(1) The definition of "rectifier" in T.C.A § 57-3-101 includes anyone who blends alcoholic beverages with other ingredients or alcoholic beverages as long as such operations are permitted under and operated in compliance with the rules and regulations of the Alcohol and Tobacco Tax and Trade Bureau.

(2) An applicant for license under T.C.A § 57-3-202 shall not be required to designate whether they are a distiller, a rectifier, or both.

Authority: T.C.A. §§ 57-3-101, 57-3-104, 57-3-202 and 57-3-207.

DRAFT

Chapter 0100-06 Intra-Industry Conduct and Regulations is amended by deleting the chapter in its entirety and by substituting instead the following language:

RULES OF THE ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 0100-06 INTRA-INDUSTRY CONDUCT AND REGULATIONS

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0100-06-.01 Definitions.

(1) General. As used in this chapter, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in Title 57 of the Tennessee Code Annotated shall have the meaning assigned to it by that Title.

(2) Consignment Sales. The term "consignment sales" shall mean arrangements where the trade buyer is under no obligation to pay for distilled spirits or wine until they are sold by the trade buyer.

(3) Equipment and Supplies. The term "equipment and supplies" shall include, but is not limited to, glassware (other than glassware bearing conspicuous and substantial advertising matter which is a consumer advertising specialty or similar containers made of different material), dispensing accessories, and carbon dioxide (and other gases used in dispensing equipment), pouring racks, and other similar items used to conduct a retailer's business. "Dispensing Accessories" include, but are not limited to, standards, faucets, cold plates, rods, vents, taps, tap boxes, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

(4) Exchange. The transfer of distilled spirits, wine, or other products from a trade buyer to an industry member with other product taken as a replacement.

(5) Industry Member. The term "industry member" shall mean any person engaged in business as a manufacturer, distiller, rectifier, blender, non-resident seller, non-manufacturer non-resident seller, or other producer, or as an importer, or wholesaler, of distilled spirits, or wine, or as a bottler, or warehousemen and bottler, of distilled spirits, licensed in the state of Tennessee.

(6) Product. The term "product" shall mean distilled spirits, wine, or alcoholic beverages, as defined in Title 57 of the Tennessee Code Annotated.

(7) Product Display. The term "product display" shall mean any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, and beverages are held, shelved, displayed, and sold.

(8) Retailer. The term "retailer" shall mean any person engaged in the sale of distilled spirits, wine, or alcoholic beverages to consumers, licensed in the state of Tennessee, whether such sales are made for consumption on or off the premises where sold.

(9) Retail Establishment. The term "retail establishment" shall mean any premises where distilled spirits, wine, or alcoholic beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

(10) Return. The transfer of distilled spirits, wine, or other product from a trade buyer to the industry member from whom they were purchased, for cash or credit.

(11) Trade Buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or other product.

Authority: T.C.A. §§ ~~57-1-201 and~~ 57-1-209 and 57-3-104.

0100-06-.02 General Prohibitions.

(1) Except as provided in Rule 0100-03-.16, industry members are prohibited from acquiring or holding any interest, directly or indirectly, in any license (state, county, or municipal) with respect to the premises of a retailer.

(2) Except as provided in Rule 0100-03-.16, industry members are prohibited from acquiring any interest, directly or indirectly, in real or personal property owned, occupied, or used by a retailer in the conduct of the business.

(3) Subject to the exceptions listed herein, industry members, or any representative thereof, are prohibited from furnishing, giving, renting, lending, or selling to the retailer, and the retailer is prohibited from accepting any equipment, fixtures, signs, supplies, money, services, or other thing of value. The furnishing of free warehousing by delaying delivery of distilled spirits, wine, or alcoholic beverages or by storing such for a retailer by an industry member is prohibited.

(4) Industry members, or any representative thereof, are prohibited from paying or crediting the retailer, and the retailer is prohibited from accepting any advertising, display, or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer.

(5) An industry member or any representative thereof is prohibited from requiring a trade buyer to take and dispose of any quota of distilled spirits, wine, or malt beverages.

(6) A requirement that a retailer purchase one product in order to purchase another is prohibited. This includes combination sales if one (1) or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling at a special combination price, two (2) or more kinds of brands of products to a retailer, provided that:

(a) The retailer has the option of purchasing either product at the usual price; and

(b) The retailer is not required to purchase any product he or she does not want.

(7) No retailer shall obtain alcoholic beverages from any source not designated to sell that brand under the brand registration statute, T.C.A. § 57-3-301.

(8) No manufacturer, importer, non-resident seller, non-manufacturing non-resident seller or any representative thereof – e.g. third party marketing entities – ~~may~~ shall solicit orders in

any manner for alcoholic beverages from anyone in this state except ~~from~~ those holding wholesale ~~liquor~~ licenses. The marketing, advertising, or promoting, or the encouraging of the public to purchase the manufacturer's, non-resident seller's, or non-manufacturer non-resident seller's product, does not constitute soliciting an order and does not require a permit.

(9) It is unlawful for one (1) industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, or contract to purchase any products:

(a) On consignment; or

(b) Under conditional sale; or

(c) With the privilege of return; or

(d) On any basis other than a bona fide sale; or

(e) If any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

(10) (a) Tied Sales Prohibited. A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry members from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) Exchange. The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

(c) Exclusion. An industry member, or any representative thereof – e.g. third party marketing entities — ~~may~~ shall not require, nor may a retailer request, offer, and/or accept an exclusive arrangement wherein the retailer agrees, in exchange for money, services, or any other thing of value from the industry member, to offer for sale the industry member's product ~~exclusively~~ to the exclusion of other related products.

Authority: T.C.A. §§ ~~57-1-201 and~~ **57-1-209**, 57-3-104, 57-3-202, ~~57-1-209,~~ 57-3-210, 57-3-405, 57-3-604, 57-4-201, and Public Chapter 371, Public Acts of 2017.

0100-06-.03 Exceptions to General Prohibitions.

(1) General. An industry member or any representative thereof – e.g. third party marketing entities – may furnish a retailer equipment and supplies, signs, posters, place cards, decorations, devices, statuettes, or geographic displays (printed, painted, or electric) for point-of-sale advertising, and services or other things of value in accordance with the exceptions provided in this part and may install or set up such materials in the windows or

elsewhere in the interior of a retail establishment. The cost limitations imposed in this rule will be deemed adjusted upon any modification in a similar rule made by the Trade and Taxation Bureau of the United States Department of the Treasury.

(2) Product Displays.

(a) General. An industry member may furnish, give, rent, loan, or sell product displays to a retailer, subject to the limitations prescribed in subparagraph (b) of this ~~section~~ paragraph.

(b) Conditions and Limitations.

1. The total value of all product displays furnished by an industry member under subparagraph (a) of this ~~section~~ paragraph may not exceed three hundred dollars ($300) or current federal limits per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded for the purposes of this calculation.

2. Industry members may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of three hundred dollars ($300) or current federal limits per brand.

3. Product displays shall bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed.

4. The furnishing, giving, renting, loaning, or selling of such product displays may be conditioned upon the purchase of the products advertised on those displays in a quantity necessary to initially stock such display.

(3) Interior Signs.

(a) General. An industry member or any representative thereof – e.g. third party – marketing entities, may furnish, give, rent, loan, or sell to a retailer inside signs which bear advertising matter. Inside signs include such things as posters, placards, designs, mechanical devices, and window decorations.

(b) Conditions and limitations. Industry members or any representative thereof – e.g. third party marketing entities – may furnish inside signs to retailers under the following limitations:

1. The inside sign shall have no secondary value and be of value to the retailer only as advertising.
2. The inside sign shall be used only in the windows or other interior portions of the retail establishment.
3. The industry member may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

(4) Advertising Service. An industry member or any representative thereof – e.g. third party marketing entities – may list in its advertisement the names and addresses of all retailers selling the alcoholic beverage product(s) of the industry member within the geographic area targeted by the advertisement, provided that:

(a) The advertisement does not also contain the retail price of the product;

(b) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole; and

(c) The advertisement does not refer only to one retailer or only to retail premises controlled directly or indirectly by the same licensed entity and refers to all retailers selling the alcoholic beverage product(s) of the industry member within the geographic area targeted by the advertisement.

~~(4)~~(5) Outside Signs.

(a) General. Subject to local ordinances, an industry member or any representative thereof – e.g. third party marketing entities – may furnish, give, rent, loan, or sell to a retailer outside signs (electrical, mechanical, inflatable, or otherwise) which bear advertising matter ~~subject to local ordinances~~.

(b) Conditions and limitations. Industry members, or any representative thereof – e.g. third party marketing entities – may furnish outside signs to retailers under the following limitations:

1. The sign must bear conspicuous and substantial advertising matter about the product or the industry member that is permanently inscribed or securely affixed.

2. The cost of the signs may not exceed four hundred dollars ($400) per brand, which includes installation costs.

3. The outside sign must be located on the wall or roof of a building adjacent to or occupied by the retailer, or in a retailer's parking lot.

4. The name and address of the retailer may appear on the outside sign.

5. The industry member, or any representative thereof – e.g. third party marketing entities – may not directly or indirectly pay or credit the retailer for displaying the sign or for any expense incidental to its operation.

~~(5)~~(6) Routine Business Entertainment. Nothing in this chapter shall prohibit an industry member or any representative thereof – e.g. third party marketing entities – from providing a retail licensee or its employee routine business entertainment which is defined as follows:

(a) Meals or beverages;

(b) Concerts, theatre, and arts entertainment;

(c) Sports participation and entertainment;

(d) Entertainment at charitable events;

(e) Private parties;

(f) Transportation and lodging costs associated with any of the forgoing listed under these subparagraphs (a)-(e).

~~(6)~~(7) Limitations on Routine Business Entertainment. For the purposes of this section:

(a) Routine business entertainment shall be provided only if such is provided without a corresponding obligation on the part of the retail licensee or on-premise consumption licensee to purchase alcoholic beverages or to provide any other benefit to such industry member or to exclude from sale the products of any other industry member.

(b) There is no maximum dollar amount for providing routine business entertainment designated under ~~Section~~ subparagraphs (b), (c), or (d) of paragraph (6) of this rule~~.~~, provided however that transportation pursuant to subparagraph (f) of paragraph (6) or lodging to or for an event under subparagraphs (b), (c), or (d) of paragraph (6) is subject to the three hundred dollar ($300) limit of subparagraph (c) below.

(c) Routine business entertainment expenses under subparagraphs (a), (e), or (f) of paragraph (6) shall not exceed a fair market value of ~~100.00~~ three hundred dollars ($300) per twenty-four (24) hour period for an employee of any retail or on-premise consumption licensee including a self-employed sole proprietor or, if the licensee is a partnership, ~~or~~ any partner or employee thereof, or if the licensee is a corporation, any corporate officer, director or shareholder, or the guest of such, or to any third party partnership, LLC, or corporation associated directly or indirectly with the retail or on-premise consumption licensee designed to circumvent the intent of this provision. Further, routine business entertainment expenses as stated above may not exceed six (6) employees/per day from the same licensee.

(d) No person enumerated in subparagraph (c) of paragraph (7) above may be entertained by a wholesaler more than four (4) times per calendar year. The wholesaler shall maintain documentation of all expenditures under this section containing sufficient information to fully document the expenditure.

(e) Routine business entertainment permitted under paragraph (6) above must occur either within the state of Tennessee or, if outside the state of Tennessee, within one hundred (100) miles of the premises of the retail licensee receiving the routine business entertainment.

~~(e) Routine business entertainment permitted under Section (5) above shall not include transportation to or from an event that is otherwise permitted beyond one hundred (100) miles.~~

~~(7)~~(8) Retailer Advertising Specialties – Point-of-Sale.

(a) General. An industry member or any representative thereof – e.g. third party marketing entities – may furnish, give, rent, loan, or sell point-of-sale advertising materials to a retailer if such items bear advertising matter and are primarily valuable to the retailer as point-of-sale advertising to attract consumer attention to the products of the industry member who furnished them. Such items include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, napkin holders, foam scrapers, back bar mats, placemats, bar utensil caddies, other bar utensils, and items (such as strainers, citrus pressers, and stir rods), tap standards, shakers, stir sticks, ice molds and ice trays, cups, glassware, pitchers, carafes, and similar containers

made of other materials, thermometers, clocks, lamps, calendars, ~~and~~ alcoholic beverage lists or menus, lighted displays, display mirrors, chalkboards, bulletin boards, dart board backgrounds, table tents, menu and table tent holders, case cards, candles and holders, check and credit card holders, empty flash and jump drives, umbrellas, and apparel (such as shirts, hats, caps, and visors).

(b) Consumer Advertising Specialties. An industry member or any representative thereof – e.g. third party marketing entities - may furnish, give, rent, loan, or sell to a retailer, advertising specialties that are designed to be carried away by consumers, ~~such as~~ including, without limitation, trading stamps, pouring racks, non-alcoholic mixers, ash trays, bottle or can openers, cork screws, shopping bags, matches, candles and holders, printed recipes (including drink recipes), pamphlets, cards, leaflets, brochures, blotters, post cards, pencils, cups, mugs, glassware, pens, plates, knives, bar utensil caddies, shakers, pitchers, other bar utensils and items (such as strainers, citrus presses and stir rods), apparel (such as shirts, hats, caps, and visors), pins, buttons, key chains, check and credit card holders, empty flash and jump drives, and other branded items of nominal value.

(c) Conditions and Limitations.

1. All point-of-sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point-of-sale advertising materials and on the consumer advertising specialties.

2. The industry member or any representative thereof – e.g., third party marketing entities – may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental thereto.

~~(8)~~(9) Wine Lists or Menus. An industry member may furnish, give, rent, loan, or sell alcoholic beverage lists or menus to retailers whether in hard copy, electronic (digital or analogue), or online formats. Nothing in this paragraph 9 authorizes an industry member to provide a retailer with electronic hardware, including iPads, tablets, laptops, or other electronic devices used as menus.

~~(9)~~(10) Samples. An industry member may furnish or give a sample of branded distilled spirits, wine, or alcoholic beverages to a retailer (including, without limitation, any of their managers, salespersons, or bartenders) ~~who has not previously purchased the brand or vintage of wine from that member within the past twelve (12) months~~ for the purposes of enhancing sales of its products at retail. For each retail establishment, the industry member may give not more than 1.75 liters of any brand of distilled spirits or wine per sampling. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next largest size. An industry member may only provide such a sampling of a specific brand once every three months. An industry member who furnishes a container for sampling or tasting purposes must conspicuously mark the container as "not for resale."

~~(10)~~(11) Combination Packaging.

An industry member or trade buyer (other than a retailer which sells for consumption on the premises or a retail food store) may package, distribute, and sell wine or alcoholic

beverages in combination with other related items, other alcoholic beverages, or beer. ~~provided that:~~

~~(a) The items have no value or benefit to the retailer other than that of having the potential of attracting purchasers and thereby promoting sales;~~

~~(b) The package (product plus non-alcoholic item) is designed to be delivered intact to the consumer and consumer shall not dictate the specific packaging;~~

~~(c) The non-alcoholic item does not exceed twice the cost of the product, exclusive of the packaging material, to the industry member or trade buyer creating the package;~~

~~(d) The non-alcoholic item may not be a perishable food item; and~~

~~(e) Any additional cost incurred in creating the combination package may not be borne by the industry member.~~

~~(11)~~(12) Educational Seminars. An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of an industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar. This paragraph (12) does not preclude providing nominal hospitality during the event.

~~(12)~~(13) Stocking, Rotating, Pricing, and Other Services.

(a) A wholesaler, wholesale salesman, or permitted representative thereof may, at a retail package store ~~licensee~~, with the consent of the retailer, stock, rotate, and affix the price to distilled spirits, wine, or other alcoholic beverages that they sell, provided products purchased from other wholesalers are not altered or disturbed. Such wholesaler may also set up a point-of-sale display, product display, logoed and promotional items (including point-of sale advertising materials and consumer advertising specialties), rearrange or reset that portion of a retail package store ~~licensee~~ as is necessary for the display or placement of its product. In providing the services herein, a wholesaler, wholesale salesman or permitted representative thereof may enter the private or non-public areas of the retail package store ~~licensee~~.

(b) ~~When accompanied by a wholesaler, a wholesale salesman, or other representative of the~~ A wholesaler, a manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or any representative thereof – e.g. third party marketing entities - may ~~also~~ provide ~~those services designated in 0100-06-.03(9)(a) above~~ recommended shelf plans or shelf schematics for alcoholic beverages, provided that such industry members may not provide anything of value, and retailers may not accept anything of value, in exchange for complying or otherwise using any recommended shelf plan or schematic.

(c) Notwithstanding the restrictions contained herein, a manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative thereof – e.g. third party marketing entities – must deliver point-of-sale advertising materials intended for retail use to a wholesaler's warehouse, and a manufacturer, importer, non-resident seller, non-manufacturer non-resident seller, or representative thereof – e.g. third party marketing entities - may provide and set up such point-of-sale ~~or logoed~~ advertising materials ~~(including, but not~~

~~limited to, product displays, interior signs, point of sale advertising materials, and consumer advertising specialties)~~ at a retail package store **establishment only in consultation and by mutual agreement with the wholesaler from which such point of sale or logoed materials were obtained as to the intended use and recipient(s) thereof.** In providing the services herein, a manufacturer, importer, non-resident seller, non-manufacturer non-resident seller or representative thereof – e.g. third party marketing entities - may enter the private or non-public areas of the retail package store. As used in this paragraph, "point-of-sale advertising materials" include point-of-sale displays and refer to the advertising items described under paragraph (1) of Rule 0100-03-.06 and paragraph (8) of this Rule. "Point of sale advertising materials" do not include product displays (i.e. wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, and beverages are held, shelved, displayed and sold).

(d) Nothing in this paragraph (13) shall be construed to authorize any services or conduct that is otherwise prohibited for retail food stores in T.C.A. § 57-3-815.

~~(13)~~(14)Consumer Promotions – Direct Offerings. A manufacturer, supplier, importer, non-resident seller, non-manufacturer non-resident seller, distiller, ~~or~~ winery, or any representative thereof – e.g. third party marketing entities -, may offer coupons for refunds and contest prizes, premium offers, and sweepstakes to consumers only on the following basis:

(a) A refund coupon may be distributed to a consumer only as an element of the industry member's advertising or marketing program through newspapers or magazines, combination packaging, the internet, any other social media platform, neck hangers (on or in caps, cap liners, corks, containers, labels, cartons, cases, or other materials which comes with a purchased alcohol beverage), other point-of-sale advertising (e.g., tear pads that are part of shelf talkers, and case cards), flyers, and by direct mail. Retailers for on-premise consumption may not participate in such programs.

(b) Contest prizes, premium offers, sweepstakes, and like items may be offered by industry members or any representative thereof – e.g. third party marketing entities - directly to consumers at point-of-sale, via neck hangers (on or in caps, cap liners, corks, containers, labels, cartons, cases, or other materials which come with a purchased alcohol beverage) and other point-of-sale advertising (e.g., tear pads that are part of shelf talkers and case cards), through newspapers or magazines, and through the internet, mobile/other electronic communication devices and communications via social media, flyers, and by direct mail in conjunction with combination packaging. Retailers for on-premise consumption may participate in such programs.

(c) Officers, employees, and representatives of wholesalers and retailers are excluded from participation. Nothing of value may be supplied to a trade buyer by an industry member or any representative thereof – e.g. third party marketing entities - to induce or reward participation in any practice allowed hereunder. Industry members or any representative thereof – e.g. third party marketing entities - are prohibited from requiring any retailer to participate in any practice allowed hereunder nor shall a particular retailer or group of retailers be specified by an industry member or any representative thereof – e.g. third party marketing entities - for participation in any practice allowed hereunder.

(d) Notwithstanding subparagraph (c), an industry member or any representative thereof – e.g. third party marketing entities - may award prizes to a retail employee as part of a nationwide or statewide contest, such as a bartender's

contest or drink recipe contest, conducted by the industry member or such representative, in accordance with applicable contest rules; provided, that the entry or award is not based upon retail sales of the sponsor's product and the industry member has received advance written approval of the contest by the TABC. Such contest shall be open to all retail licensees of the same type - e.g., "on-premise or off-premise" consumption licensees, or both.

~~(d)~~(e) No coupon shall be permitted for a refund by a retailer at the point-of-sale ("cents-off" coupons). Refund coupons may be utilized by a manufacturer, supplier, importer, non-resident seller, non-manufacturer non-resident seller, distiller, ~~or~~ winery, or any representative thereof -- e.g. third party marketing entities -, that are redeemable by a consumer's mailing or transmitting directly to such manufacturer, supplier, importer, non-resident seller, non-manufacturer non-resident seller, distiller, winery, or an authorized redemption agent.

~~(e)~~(f) No coupon may be redeemed by, or refund sent to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. No contest or sweepstakes prize shall be awarded to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. No premium offer shall be sent to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee.

~~(14)~~(15) Equipment and Supplies. An industry member may sell equipment or supplies to a retailer.

(a) Equipment or supplies may be sold at a price not less than the cost to the industry member who initially purchased them and the price must be collected within ten (10) days of the date of sale or rent.

(b) An industry member may install dispensing accessories at the retailer's establishment as long as the retailer pays the cost of initial installation.

(c) An industry member may furnish, give, or sell coil cleaning services to a retailer.

~~(15)~~(16) Withdrawals for Special Occasion Licensees.

(a) A~~n~~ ~~industry member~~ licensee may deplete inventories for purposes of contributing to any qualified entity that has ~~obtained~~ has applied or will apply for a special occasion ~~permit~~ license issued by the Commission and may transport such inventories directly to the qualified entity. ~~If the industry member is a manufacturer, then such contribution shall be distributed through a licensed wholesaler.~~ The ~~licensed~~ donating licensee ~~wholesaler~~ shall retain records of all such withdrawals showing the amount of inventory withdrawn, the purpose of withdrawal, and the employee responsible for such withdrawal in accordance with Rule 0100-03-.14(1).

(b) In addition to product withdrawals for special occasion licensees, an industry member may further provide such items as promotional items, equipment, fixtures, posters, supplies, sponsorships, etc. to special occasion licensees without being subject to the limitations and restrictions found in Rules 0100-06-.02 and 0100-06-.03. However, any such physical promotional items provided to the special occasion licensee for an event must be returned to the industry member at the conclusion of the event and may not be given to or left for the use of a Tennessee-licensed retailer.

(c) Further, notwithstanding Rule 0100-06-.03(8), industry members may give branded or non-branded advertising specialty items that are designed to be carried away by consumers and that are of nominal value directly to the consumer and/or attendee at a special occasion licensed event. At the conclusion of the event, any remaining branded advertising items must be returned to the industry member.

(17) Retail and Industry Association Activities. An industry member may participate in the following retailer and industry association activities:

(a) Displaying its products at a convention or trade show;

(b) Renting display booth space if the rental fee is the same as paid by all exhibitors at the event;

(c) Providing its own hospitality, which is independent from association sponsored activities;

(d) Purchasing tickets to functions and paying registration fees if the payments or fees are the same paid by all attendees, participants, or exhibitors at the event; and

(e) Making payments for advertisements, programs, or brochures issued by retail associations at a convention or trade show if the total payments made by the member and its representatives do not exceed three hundred dollars ($300) per year.

Authority: T.C.A. §§ 57-1-209, ~~57-1-201, and~~ 57-3-104, 57-3-202, 57-3-404, 57-4-201 and, Public Chapter 147, Public Acts of 2017.

0100-06-.04 Limitation On Credit Sales.

(1) No alcoholic beverage shall be sold by any wholesaler nor shall any retailer purchase any alcoholic beverages except for cash or on terms requiring payment by the purchaser within ten (10) days.

(2) Each and every delivery of merchandise by a wholesaler to a retailer must be accompanied by an invoice of sale bearing the actual date of the delivery. A wholesaler must keep and maintain a current and accurate accounts receivable ledger as a part of his records.

(3) (a) ~~The 10-day credit period begins on the day immediately following the invoice date and concludes at midnight of the tenth day including Sundays and holidays, immediately following which the account is considered delinquent.~~ The ten-day period begins from delivery and receipt by the retail licensee. The ten-day period cannot include any day that the wholesaler is not open to make deliveries, receive payment, or receive mail.

(b) ~~Payment sent by mail and postmarked by midnight of the due date shall be considered compliance.~~ Any suspension of deliveries is a credit decision to be made by a wholesaler and a retail licensee.

(4) (a) Wholesalers must deposit all checks for payment of retail accounts no later than the first banking day following actual receipt of said check.

(b) An account paid for by check within the ten-day (10) credit period but which is dishonored for any reason after the ten-day (10) credit period has elapsed is delinquent.

(c) A wholesaler shall not accept and a licensee shall not offer a postdated check.

~~(5) A wholesaler must report each and every delinquent account as set forth above by telephone to the Commission's nearest Regional Representative, and, as each such account is paid in full, he shall report that fact to the Commission's representative also.~~

~~(6) A retailer reported delinquent shall not be permitted to purchase merchandise for cash or otherwise from any licensed wholesaler until said licensee satisfies all obligations then outstanding to all wholesalers although the ten (10) day credit period may not have expired on such obligations.~~

~~(a) If such delinquency is the first in a license year, and such retailer sells for consumption on the premises all wholesalers will be required to sell such retailer merchandise only for cash on delivery for a minimum period of thirty (30) days from notice by the Commission.~~

~~(b) If such delinquency is the second in a license year, all wholesalers will be required to sell such retailer merchandise only for cash on delivery for a period of twenty (20) days, if such retailer sells for off-premises consumption, or for a period of sixty (60) days, if such retailer sells for on premises consumption.~~

~~(c) If such delinquency is the third in a license year, all wholesalers will be required to sell such retailer merchandise only for cash on delivery until notice to the contrary by the Commission. Such retailer shall be required by the Commission to appear and show cause why the retail liquor license should not be suspended or revoked, or why said licensee should not be placed on a cash on delivery basis for all merchandise sold to said licensee by any wholesaler for a period fixed by the Commission.~~

~~(7)~~(5) Payment by Electronic Funds Transfer ("EFT").

(a) Electronic Funds Transfer shall mean any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(b) To facilitate payment between wholesale licensees and the retail on-premise and off-premise consumption licensees, Electronic Funds Transfers are an approved method of payment; however, participation by the retail on-premise and off-premise consumption licensees shall be voluntary. The wholesaler shall initiate the Electronic Fund Transfer transmittal. Payment is considered to be made when the funds are deposited in the wholesale licensee's account.

(c) The provisions of paragraph (5) are not intended to otherwise affect or amend paragraphs (1)-(4).

Authority: T.C.A. §§ ~~57-1-201 and~~ 57-1-209, 57-3-104, 57-3-202, 57-3-404, and 57-3-815.

0100-06-.05 Dual Permits Prohibited.

(1) No person shall be issued more than one (1) of the following permits:

(a) Manufacturer or importer representative permit;

(b) Wholesale salesman or representative permit;

(c) Wholesale employee's permit;

(d) Off-premises retail employee's permit;

(e) On-premises retail employee's permit; or

(f) Manager's permit.

(2) Notwithstanding the provisions of Rule 0100-06-.05(1) above, any individual may be issued an off-premise retail employee permit, an on-premise server permit, and a manager's permit, or any combination thereof, if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.

(3) In all cases, the industry member is responsible for the actions of their employees and/or representatives only when such employee and/or representative is acting within the scope of their employment of such industry member, but not within the scope of employment of another industry member.

Authority: T.C.A. §§ ~~57-1-201,~~ 57-1-209, ~~and~~ 57-3-104~~(c)(4)~~, 57-3-710, and 57-4-202.

0100-06-.06 Wholesale Sales and Employee Permits.

(1) Any permit issued by the Commission pursuant to T.C.A. § 57-3-203(d) or (e) shall be valid for a period of five (5) years from its date of issuance.

(2) Any person seeking a permit authorized pursuant to T.C.A. § 57-3-203(d) or (e) shall submit an application in writing to the Commission on forms approved by the Commission.

(3) No application for permit issued pursuant to T.C.A. § 57-3-203(d) or (e) shall be considered unless the application is accompanied by a processing fee of twenty dollars ($20).

Authority: T.C.A. §§ ~~57-1-201,~~ 57-1-209~~,~~ 57-3-203, ~~and~~ 57-3-709 and 57-3-710.

0100-06-.07 Retail Employee Permits.

~~(1) Any permit issued by the Commission pursuant to T.C.A. § 57-3-204(c) shall be valid for a period of five (5) years from its date of issuance.~~

~~(2) Any person seeking a permit authorized pursuant to T.C.A. § 57-3-204(c) shall submit an application in writing to the Commission on forms approved by the Commission.~~

~~(3) No application for permit issued pursuant to T.C.A. § 57-3-204(c) shall be considered unless the application is accompanied by a processing fee of twenty dollars ($20.00).~~

~~(4)~~ After the conclusion of business on June 30, 2016, no permit issued pursuant to T.C.A. § 57-3-204(c) shall be issued by the Commission. Any permit issued by such time shall

remain in effect and be valid for five (5) years after the permit's issuance, and any employee of a retail package store who has a valid permit under T.C.A. § 57-3-204(c) on July 1, 2016, shall not be required to be a certified clerk pursuant to T.C.A. § 57-3-818 until that permit expires.

Authority: T.C.A. §§ ~~57-1-201,~~ 57-1-209, 57-3-104~~(c)(4)~~, 57-3-204~~(c)~~, and 57-3-~~709~~ 710.

0100-06-.08 Non-resident Seller Permits.

(1) Anyone desiring to import, ship, or transport alcoholic beverages into the State of Tennessee for distribution and/or sale within the State of Tennessee must make application to the Commission for a non-resident seller's permit. Such application shall include the name of the entity applying for the permit, and the true ownership thereof. Before alcohol may be imported, shipped, or transported into the State of Tennessee for distribution and/or sale within the boundaries of the State of Tennessee, such importer, broker, manufacturer, or supplier of the alcoholic beverage must first have obtained and be issued a non-resident permit by the Commission. Further, before alcohol may be imported, shipped, or transported into the State of Tennessee for distribution and/or sale within the boundaries of the State of Tennessee, such importer, broker, manufacturer, or supplier of the alcoholic beverage must have received from the Tennessee Department of Revenue a brand approval letter. However, only after the receipt of a non-resident seller permit issued by the Commission may that importer, broker, manufacturer, or supplier, attempt to register their brands with the Tennessee Department of Revenue.

(2) Each non-resident seller permit shall be valid for one (1) calendar year, and shall expire on December 31 of that year. Failure to timely and properly renew the non-resident seller permit shall be deemed a violation of the rule, and may result in the prohibition of the importation and/or distribution of each brand of alcohol registered by the non-resident seller permittee.

(3) Should the non-resident seller change ownership, the new owner must make application for a non-resident seller's permit as referenced in paragraph (1) above before importing, shipping, or transporting any alcoholic beverages into the State of Tennessee for distribution and/or sale within the state.

Authority: T.C.A. §§ ~~57-1-201,~~ 57-1-209, 57-3-104, ~~and~~ 57-3-202, 57-3-602 and 57-3-605.

0100-06-.09 Prohibition On Discrimination.

(1) No wholesaler, holding a license issued pursuant to T.C.A. § 57-3-203, shall discriminate, directly or indirectly, in price, in discounts on quantity of merchandise sold, between one retailer and another retailer purchasing wine or alcoholic beverages bearing the same brand or trade name and of like age and quality.

(2) The restrictions imposed in paragraph (1), above, shall not prevent a wholesaler from offering wine or alcoholic beverages to a licensee holding a license issued pursuant to T.C.A. § 57-4-101, while not offering such wine or alcoholic beverages to any licensee holding a license issued pursuant to T.C.A. § ~~57-4-203~~ 57-3-204 or 57-3-803 pursuant to a bona fide marketing plan.

(3) Notwithstanding the prohibitions of paragraph (1), above, a wholesaler may change its pricing on any wine or alcoholic beverage to meet competition, respond to bona fide market conditions, or provide a one-time, introductory offer to a retailer to introduce or promote a new product not previously purchased by such retailer.

(4) Nothing herein shall restrict the ability of a wholesaler to provide a discount to a retailer for quantity purchases or special combination offers so long as such discount is available on similar terms to other retailers.

Authority: T.C.A. §§ ~~57-1-201,~~ **57-1-209**, 57-3-104, 57-3-202, and 57-4-201.

DRAFT

* 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)
Richard Skiles	X				
Ashleigh Harb Roberts	X				
John A. Jones	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Alcoholic Beverage Commission (board/commission/ other authority) on 09/27/2018 (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: *01/17/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/14/2017*

Date: 9/27/2018

Signature:

Name of Officer: Clay Byrd

Title of Officer: Executive Director

STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY Commission Expires AUG. 20, 2019

Subscribed and sworn to before me on: 9/27/18

Notary Public Signature:

My commission expires on: 8/20/19

Agency/Board/Commission:

Rule Chapter Number(s):

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.

Herbert H. Slatery III
Attorney General and Reporter

1/17/2019
Date

Department of State Use Only

Filed with the Department of State on: 1/25/19

Effective on: 4/25/19

Tre Hargett
Secretary of State

RECEIVED
2019 JAN 25 PM 1:06
SECRETARY OF STATE
PORTLAND, ME

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	Administration
SUBJECT:	Public Records Access
STATUTORY AUTHORITY:	Public Chapter No. 712 amended the TPRA, specifically T. C. A § 10-7-503(9) requiring state government entities to promulgate rules setting forth processes, procedures and fees for public records requests by January 1, 2019. T. C A § 4-5-201 grants the commissioner of the department of agriculture the power to promulgate rules and regulations necessary to effectuate the purposes, duties and responsibilities of the department..
EFFECTIVE DATES:	April 2, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act (TPRA), requiring state government entities to promulgate rules regarding public records requests by January 1, 2019 to include the process for making requests to inspect public records or receive copies of public records and a copy of any required form; the process for responding to requests, including redaction practices; a statement of any fees charged for copies of public records and the procedures for billing and payment; and, the name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator. In November 2010, the department promulgated Chapter 0080-01-05, Fees For Copies of Departmental Public Records, for the purpose of providing procedures for access to department records and establishing fees for copies of records. The amendments to these rules will comply with the

requirements of P.C. 712, as well as conform to the language of the Model Public Records Policy of the Comptroller's Office of Open Records Counsel, as follows:

- Adds definitions or amended definitions for public record, public records request coordinator, records custodian, requester, and Tennessee citizenship, and, deletes definitions for commissioner, commissioner's designee, routine copy, non-routine copy, public record and record.

- Designates the title and contact information for the department's Public Records Request Coordinator.

- States that the requester must be a Tennessee citizen or representative of a Tennessee citizen. • Clarifies how requests are to be made and produced for copying or inspection. • Establishes procedures for responding to requests and for pickup of records.

- Establishes procedures for redaction of information.

- Allows the requester to use personal cell phone or handheld camera to make copies of records.

- Allows for the payment of copying fees by credit card.

- Allows the department to waive fees for copies and labor up to $25.00.

- Provides that there will be no charge for easily produced requests for copies of up to 10 pages in length.

A public rulemaking hearing was held at Ellington Agricultural Center, at 10:00 A.M. CDT, October 17, 2018, with Theresa Denton as the hearing officer. Oral comments at the hearing were received by Deborah Fisher, executive director of Tennessee Coalition for Open Government and are summarized below along with the department's response. The department appreciates Ms. Fisher's participation and comments.

Comment:

Ms. Fisher suggests eliminating a residency requirement for public records requests, including journalists reporting on public affairs, except in limited circumstances such as requests that may require a large amount of time to compile.

Response:

The residency requirement is consistent with T.C.A. § 10-7-503(a)(2) that public records shall be open for personal inspection by "any citizen of this state". Waivers for non-resident journalists would not be viable due to various interpretations of what constitutes a journalist or public affairs journalism. To maintain consistency, the citizenship requirement should apply to all requestors.

Comment:

Ms. Fisher suggests clarification of conditions under which proof of residency would be required and is concerned that, since the rule provides that identification may be required to show state residency, this requirement may pose a barrier to access to public records; and, that the requirement should be eliminated and the department should rely on the requestor's statement of citizenship.

Response:

The department shares Ms. Fisher's concern for identification requirements, which is why it is listed as discretionary and not mandatory. Consistent with the comment, the department typically relies on the veracity of the requestor to confirm in some manner his/her residency in the state and actually requests production of identification only when the requestor has been unable to specify, or exhibits doubt as to, his/her current residence or connection to the state. Tennessee citizenship is interpreted as a work or residential address within the state and the residency requirement for requestors is made for consistency with the public records statute at T.C.A. § 10-7-503(a)(2).

Comment:

Ms. Fischer expressed appreciation for the provision in the rule that allows requestors to use a handheld camera or cell phone to photograph records.

Response:

The department appreciates the positive comment and hopes that this provision allows easier access and inspection of public records.

Comment:

Ms. Fischer commented that the provision in the "Payment For Records" rule that the agency may provide an estimate to the requestor of the copying costs prior to doing the work to get the copies ready should be more strongly worded to say that the department shall or would provide a prior estimate.

Response:

The department shares Ms. Fisher's concern that some agencies fail to provide requestors with costs estimates and agrees that estimates are required under the TPRRA and the rule must be interpreted consistent with the provisions of T.C.A. § 10-7-503(a)(7).

Comment:

Ms. Fischer expressed appreciation for the copy fee waivers included in the rule.

Response:

The department appreciates the favorable comment.

Comment:

Ms. Fischer suggested that the department add a discretionary waiver for costs incurred when the request is determined by the department to be in the public interest.

Response:

The department appreciates the suggestion but an exemption for "public interest" is too broad to be consistently applied and would increase the response time and decrease efficiency if each request must be evaluated as to what may or may not be considered in the public interest.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule will not have any impact on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule will not have any 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;

Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act (TPRA), requiring state government entities to promulgate rules regarding public records requests by January 1, 2019 to include the process for making requests to inspect public records or receive copies of public records and a copy of any required form; the process for responding to requests, including redaction practices; a statement of any fees charged for copies of public records and the procedures for billing and payment; and, the name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

In November 2010, the department promulgated Chapter 0080-01-05, Fees For Copies of Departmental Public Records, for the purpose of providing procedures for access to department records and establishing fees for copies of records. The amendments to these rules will comply with the requirements of P.C. 712, as well as conform to the language of the Model Public Records Policy of the Comptroller's Office of Open Records Counsel, as follows:

- Adds definitions or amended definitions for public record, public records request coordinator, records custodian, requestor, and Tennessee citizenship, and, deletes definitions for commissioner, commissioner's designee, routine copy, non-routine copy, public record and record.
- Designates the title and contact information for the department's Public Records Request Coordinator.
- States that the requestor must be a Tennessee citizen or representative of a Tennessee citizen.
- Clarifies how requests are to be made and produced for copying or inspection.
- Establishes procedures for responding to requests and for pickup of records.
- Establishes procedures for redaction of information.
- Allows the requestor to use personal cell phone or handheld camera to make copies of records.
- Allows for the payment of copying fees by credit card.
- Allows the department to waive fees for copies and labor up to $25.00.
- Provides that there will be no charge for easily produced requests for copies of up to 10 pages in length.

(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;

Public Chapter No. 712 amended the TPRA, specifically T. C. A. § 10-7-503(g) requiring state government entities to promulgate rules setting forth processes, procedures and fees for public records requests by January 1, 2019. T. C. A. § 4-5-201 grants the commissioner of the department of agriculture the power to promulgate rules and regulations necessary to effectuate the purposes, duties and responsibilities of the department.

(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;

The rule will affect any person, organization, corporation or government entity making a public records request to the department pursuant to the TPRA.

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

There are no known attorney general opinions that directly relate to this rule.

(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;

There will be no probable increase or decrease in state and local government revenues and expenditures resulting from this rule.

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

Theresa Denton, General Counsel

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

Theresa Denton, General Counsel

(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

Theresa Denton, General Counsel 442 Hogan Road, Ellington Agricultural Center Post Office Box 40627 Nashville, TN 37204 615-847-5280 Theresa.denton@tn.gov

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

None

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For Department of State Use Only

Sequence Number: 01-03-19
Rule ID(s): 8029
File Date: 1/2/19
Effective Date: 4/2/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Department of Agriculture
Division: Administration
Contact Person: Theresa Denton
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: Theresa.denton@tn.gov

Revision Type (check all that apply):
X Amendment
____ New
____ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0080-01-05	Public Records Access
Rule Number	**Rule Title**
0080-01-05-.01	Purpose
0080-01-05-.02	Definitions
0080-01-05-.03	Requests for Access to Records
0080-01-05-.04	Responding to Public Records Requests
0080-01-05-.05	Copies of Records
0080-01-05-.06	Payment for Records
0080-01-05-.07	Copy Fee Waivers

Amendments

Chapter 0080-01-05
Public Records Access

Chapter 0080-01-05 Fees for Copies of Departmental Public Records is amended by re-titling the chapter "Public Records Access".

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

Rule 0080-01-05-.01 Purpose and Scope is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-01-05-.01 Purpose ~~and Scope.~~

These rules are promulgated ~~for the purpose of providing procedures to allow access to records of the Tennessee Department of Agriculture that are subject to the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., and are promulgated for the additional purpose of implementing and establishing fees to be charged for reproduction of records or for the development of records in a specific format~~ to provide economical and efficient access to public records as provided under the Tennessee public Records Act ("TPRA") in Tenn. Code Ann §§ 10-7-501, et seq.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

Rule 0080-01-05-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-01-05-.02 Definitions.

~~(1) "Commissioner" means the Commissioner of the Tennessee Department of Agriculture.~~

~~(2) "Commissioner's Designee" means Deputy Commissioner, Assistant Commissioners, Executive Assistants, General Counsel, Staff Attorneys or Division Directors of the Department of Agricutlure.~~

~~(3) "Routine Copy" is a paper copy of a record which, to be made, requires minimal staff assistance, i.e., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier.~~

~~(4) "Non-routine Copy" is a copy, whether of paper or of electronically stored data, which requires more than minimal staff assistance, i.e., odd or oversize pages, bound documents, or manipulation of electronically stored data.~~

~~(5) "Public Record"~~

~~(a) "Public Record" means, for purposes of this Chapter, any record of the Department that is deemed to be open to inspection of the public pursuant to the provisions of the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et. seq., and pursuant to court order and case law interpreting the Act.~~

~~(b) The term "Public Record" does not include any data in any record, or any portion of a record, that is:~~

~~1. protected as confidential or privileged pursuant to any state law or regulation, or federal law or regulation or under any court order; or~~

~~2. protected as privileged under any statutory or common law privilege; or~~

~~3. protected as any attorney work product; or~~

~~4. protected by the attorney/client or any other professional privilege, or~~

~~5. investigative records protected by T.C.A. 10-7-504.~~

~~(6) "Record"~~

~~(a) The term "Record" includes, for purposes of this Chapter, any data and/or documents developed and maintained by the Department, or that have been received and are maintained by the Department, during the normal course of the Department's business activities including all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.~~

~~(b) "Records" subject to this Chapter may be maintained on paper, magnetically, or electronically, on a single computer or computer system, whether on disk, tape or otherwise.~~

(1) "Public Record" means, all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2) "Public Records Request Coordinator" or coordinator means the individual, including any person acting at the direction of the individual, designated by the commissioner to coordinate responses to public record requests and ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA.

(3) "Records Custodian" means the office, official or employee directly responsible for the custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

(4) "Requestor" means a person seeking access to a public record, whether for inspection or duplication.

(5) Tennessee citizenship means having a physical work or residential address within the state. Post office boxes shall not be considered proof of citizenship under this definition.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.03 Requests for Access to Records is amended by deleting the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0080-01-05-.03 Requests for Access to Records.

~~(1) A request for access to public records shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.~~

~~(2) Requests may be made orally or in writing to the office of the Commissioner, or to any Department employee, and shall identify with reasonable specificity the record, set or system of records which is requested. Records requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant, subject to the requirements of the Tennessee Public Records Act.~~

~~(3) Prior Review and Assessment for Confidential, Privileged or Protected Material/Non-Routine Requests:~~

~~(a) Review, Assessment and Redaction for Access to Records Requests.~~

~~1. Before providing access to the requested record, the Department's staff shall review the record or records as quickly as reasonably possible consistent with the requirements of the Tennessee Public Records Act, the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status of the records and scope of the requested access.~~

~~2. Upon review, the Department's staff may redact any such data or information prior to release of the record, or portion of the record, that it has reason to believe has or may have confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.~~

(1) Requests may be submitted orally or in writing to any department employee. However, requests are not deemed received by the department until presented to the Public Records Request Coordinator (PRRC). The coordinator's contact information, including mailing address, telephone number, facsimile number, and email address, shall be made available at the department's internet website. Direct contact information for the coordinator is: Tennessee Department of Agriculture, Public Records Request Coordinator, Post Office Box 40627, Nashville, Tennessee 37204, (615) 837-5100.

(2) The department may require that requests for copies of public records be made in writing. Requests in writing may be submitted in person or by conventional or electronic mail.

(3) Requests to access public records for inspection only are not required in writing. However, the department may require a mailing or e-mail address from the requestor in order to provide any written communication mandated under the TPRA.

(4) A requestor must be either a Tennessee citizen or a representative of a Tennessee citizen, submitting the request on the citizen's behalf. The department may require proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternative identification deemed acceptable by the PRRC.

(5) Production of public records may be requested in a particular format; however, the PRRC retains discretionary authority over the manner of production. Absent extraordinary

circumstances the PRRC will produce public records in the manner deemed most economical and efficient and will not authorize removal of any original record from departmental facilities for copying.

(6) The department may require a reasonable appointment time and location for inspection of public records. Location for inspection of records shall be determined in the sole discretion of the PRRC.

(7) The department may aggregate records requests in accordance with the Frequent and Multiple Request Policy promulgated by the Office of Open Records Counsel.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.04 Fees and Costs for Production of Records is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

~~0080-01-05-.04 Fees and Costs for Reproduction of Records.~~

~~Upon a request for records under the Tennessee Public Records Act, the Department shall assess charges for the copying and labor based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel, available at http://www.comptroller.state.tn.us/openrecords/index.htm.~~

0080-01-05-.04 Responding to Public Records Requests.

(1) The PRRC shall review public record requests and make an initial determination that the requestor provided evidence of Tennessee citizenship; that the records requested are described with sufficient specificity to be identified; and, that the department is the custodian of the records.

(2) The PRRC shall respond to the request according to the requirements of the TPRA.

(3) The department shall not charge fees for inspection only of open public records.

(4) If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access; and, shall provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

(5) The following information will be redacted from department records prior to access:

(a). Information that is protected, confidential or privileged pursuant to any state law or regulation; federal law or regulation; or court order;

(b). Information protected as attorney-client communication or attorney work product; or,

(c). Any record or information required to be confidential in conjunction with the department's participation in a federally funded program.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.05 Copying by Requesting Person or Entity is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

~~0080-01-05-.05 Copying by Requesting Person or Entity.~~

~~(1) The Commissioner, or the Commissioner's designee, may, in his or her discretion, permit the requesting person to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request, and all, or a portion, of the fees required by this Section may, in his or her discretion, be waived by the Department, but no record shall be permitted to be removed from the Department's offices for this purpose without written approval by the Commissioner or the Commissioner's designee.~~

~~(2) The Department may provide any personnel to observe the copying process permitted by this paragraph to protect the integrity of the records, and the costs of staff time necessary for this purpose may be charged pursuant to this Section.~~

0080-01-05-.05 Copies of Records

(1) Copies of requested records may be made available for pickup at a location determined by the PRRC. Upon payment for postage, copies will be mailed to the requestor's address by the United States Postal Service.

(2) Except for the use of a cell phone or handheld camera, a requestor will be not allowed to make copies of records with personal equipment.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

0080-01-05-.06 Payment for Records is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-01-05-.06 PAYMENT FOR RECORDS.

~~(1) Prior to copies being made or prior to developing a specific format for the reproduction of records, the Department may provide an estimate of copying costs and require payment prior to copies being made or prior to developing a specific format for the reproduction of records.~~

~~(2) The department will accept, as payment for the costs of reproducing records, cash, cashier's check, money order; and, at the department's discretion, personal checks.~~

~~(3) The check, cashier's check or money order shall be made payable to the Treasurer, State of Tennessee, and be delivered to the Department contact responsible for reproducing the record.~~

~~(4) Production of Records from a Database or Backup Files.~~

~~(a) If the requested record or information is maintained in an electronic or digital database or other non-printed form and providing the record for inspection and/or copying will require development of a program/application or the reloading of backup files to produce the record or put it into a readable format, the requestor shall reimburse the Department for the full cost of employee time and/or other costs, including the cost of services provided by an independent contractor, associated with developing the program/application or the reloading of backup files to produce the record. The charge for producing the record shall be in~~

~~addition to any fees charged for the cost of copying the public record as provided elsewhere in this Rule.~~

(1) This chapter shall be interpreted and enforced in accordance with the TPRA and using the current Schedule of Reasonable Charges issued by the Office of Open Records Counsel as a guide.

(2) Prior to copies being made or prior to developing a specific format for the reproduction of records, the PRRC may provide an estimate of copying costs and require payment prior to copies being made or prior to developing a specific format for the reproduction of records.

(3) Payment for the costs of reproducing records shall be made by cash, cashier's check, money order; or, at the department's discretion, personal checks or credit cards. Checks or money orders shall be made payable to the Treasurer, State of Tennessee. Payment for production of records shall be delivered to the PRRC.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

Rule 0080-01-05-.07 Copy Fee Waivers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-01-05-.07 Copy Fee Waivers.

(1) The Department may waive fees ~~that are otherwise due pursuant to this rule if they determine that the person seeking such waiver is indigent, or if, in their opinion, such waiver serves the public welfare~~ for copies and labor up to $25.00. ~~. Such waivers will be liberally granted; however, excessive or unreasonable requests may be denied.~~

(2) The Department may provide copies of rules, guidance documents, public reports, etc., at no charge.

(3) The Department may waive fees for copies of public records provided to Federal, State or local governmental agencies or officials.

(4) The Department may waive fees for copies of public records provided to any person that will use the records to perform work or other official business for the Department.

~~(5) The Department may waive copy charges if the request is for a routine record not exceeding ten (10) pages in length that may be readily copied and delivered to a requester in person or by facsimile transmission.~~

(5) No duplication costs will be charged for requests of records of up to 10 pages in length that may be readily copied and delivered to a requester.

Authority: T.C.A. §§ 4-5-201 et seq., 4-3-203(10)(A), 10-7-503, 10-7-504, 10-7-506.

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 12/12/2018, 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: 08/23/18

Rulemaking Hearing(s) Conducted on: (add more dates). 10/17/18

Date: 12/12/2018

Signature:

Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: 12/12/2018

Notary Public Signature:

My commission expires on: 07/05/2021

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission:

Rule Chapter Number(s):

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.

Herbert H. Slatery III
Attorney General and Reporter

12/27/2018
Date

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Filed with the Department of State on: 1/2/19

Effective on: 4/2/19

Tre Hargett
Secretary of State

Public Hearing Comments

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Middle Tennessee State University
SUBJECT:	Public Records – Inspecting and Copying
STATUTORY AUTHORITY:	Tennessee Code Annotated, § 10-7-503(g)(2), requires state government entities to promulgate rules regarding public records that meet the requirements of § 10-7-503(g)(1).
EFFECTIVE DATES:	April 3, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Previously, MTSU adopted and followed the Comptroller's Office of the Open Records model policy related to responding to requests for public records. The proposed rule does not materially change MTSU's previous policy or processes for responding to such requests.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule is not anticipated to have an impact on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule is not anticipated to have an impact on local government.

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;

Previously, MTSU adopted and followed the Comptroller's Office of the Open Records model policy related to responding to requests for public records. The proposed rule does not materially change MTSU's previous policy or processes for responding to such requests.

(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;

T.C.A. § 10-7-503(g)(2) requires state government entities to promulgate rules regarding public records that meet the requirements of T.C.A. § 10-7-503(g)(1).

(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;

The MTSU Board of Trustees urges adoption. Individuals/entities that wish to review public records of the State of Tennessee are directly affected by this rule. MTSU believes the rule is consistent with the intent of the law, namely to create transparency in its operations, but does not know whether interested individuals/entities would urge adoption or rejection of this rule.

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

None known.

(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;

Heidi Zimmerman, MTSU University Counsel

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

Heidi Zimmerman, MTSU University Counsel

(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

Heidi Zimmerman

MTSU University Counsel
1301 E. Main Street, CAB 209
Murfreesboro, TN 37132
615-898-2025
Heidi.zimmerman@mtsu.edu

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

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312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 01-10-19
Rule ID(s): 8050
File Date: 1/3/19
Effective Date: 4/3/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Middle Tennessee State University
Division:
Contact Person: Heidi Zimmerman, University Counsel
Address: 1301 E. Main Street, CAB 209, Murfreesboro, TN
Zip: 37132
Phone: 615-898-2025
Email: Heidi.zimmerman@mtsu.edu

Revision Type (check all that apply):
___ Amendment
x New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0240-07-01	Public Records – Inspecting and Copying
Rule Number	**Rule Title**
0240-07-01-.01	Purpose
0240-07-01-.02	Definitions
0240-07-01-.03	Procedures to Access Public Records
0240-07-01-.04	Copying of Public Records
0240-07-01-.05	Aggregation of Frequent and Multiple Requests

Rules
of
Middle Tennessee State University, Murfreesboro
Chapter 0240-07-01
Public Records – Inspecting and Copying

New

Table of Contents is added to Chapter 0240-07-01 Public Records – Inspecting and Copying and shall read as follows:

Table of Contents

0240-07-01-.01 Purpose
0240-07-01-.02 Definitions
0240-07-01-.03 Procedures to Access Public Records
0240-07-01-.04 Copying of Public Records
0240-07-01-.05 Aggregation of Frequent and Multiple Requests

0240-07-01-.01 Purpose is added to Chapter 0240-07-01 Public Records – Inspecting and Copying and shall read as follows:

0240-07-01-.01 Purpose

(1) This rule establishes the process under Tennessee's Public Records Act for making and responding to requests to inspect and/or copy records, including redaction practices; the fees charged for copies of public records; the procedures for billing and payment; and the name or title and contact information of the public records request coordinator.

Authority: T.C.A. § 10-7-503.

0240-07-01-.02 Definitions is added to Chapter 0240-07-01 Public Records – Inspecting and Copying and shall read as follows:

0240-07-01-.02 Definitions

(1) Records Custodian. The MTSU office(s) or employee(s) lawfully responsible for the direct custody and care of a public record.

(2) Public Records. All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, electronic mail messages, films, sound recordings, or other material regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official University business and required to be open to inspection under the provisions of Tennessee law.

(3) Public Records Request Coordinator (Coordinator). The individual (or designee) responsible for ensuring that public records requests are routed to the appropriate records custodian and that requests are fulfilled in accordance with the Public Records Act.

(4) Requestor. A person seeking access to a public record, whether it is for inspection or duplication.

Authority: T.C.A. § 10-7-503.

0240-07-01-.03 Procedures to Access Public Records is added to Chapter 0240-07-01 Public Records – Inspecting and Copying and shall read as follows:

0240-07-01-.03 Procedures to Access Public Records

(1) Generally.

(a) Except for confidential records as prescribed by law, public records will be open for inspection by citizens of Tennessee during business hours which shall be the business hours of the University's administrative offices.

(b) Requests for inspection only may be made orally and cannot be required to be made in writing. Requests for copies, or requests for inspection and copies, must be made in writing. The Request to Inspect or Copy Public Records form may be used, but a written request in any form or format will be acceptable. Requests may be made to the Coordinator

(c) Persons requesting to inspect or copy records must show proof of Tennessee citizenship with a government-issued photo identification card including the person's address (i.e., driver's license, voter's registration, etc.).

(2) Public Records Request Coordinator.

(a) MTSU will publish the name, telephone number, email address and office location of the Coordinator .

(b) The Coordinator shall review public record requests and make an initial determination of the following:

1. if the requestor provided evidence of Tennessee citizenship;

2. if the records requested are described with sufficient specificity to identify them; and

3. if MTSU is the custodian of the records.

(c) The Coordinator shall acknowledge receipt of the request and take any of the following appropriate action(s):

1. Advise the requestor of determinations made regarding:

(i) proof of Tennessee citizenship;

(ii) form(s) required for copies;

(iii) fees and charges, including labor and programming costs;

(iv) aggregation of multiple or frequent requests.

2. Provide the records.

3. Deny the request in writing using the Public Records Request Response, which shall indicate the basis for the specific legal denial, including, but not limited to:

(i) the requestor is not, or has not presented evidence of being, a Tennessee citizen;

(ii) the request lacks specificity;

(iii) an exemption makes the record not subject to disclosure;

(iv) the University is not the custodian of the requested records;

(v) the records do not exist.

4. If appropriate, contact the requestor to see if the request can be narrowed or the scope of the request clarified.

5. Forward the records request to the appropriate records custodian.

6. If the Coordinator knows that the requested records are in the custody of a different governmental entity, advise the requestor of the correct governmental entity and the coordinator for that entity, if known.

(3) The University is not required to sort through files to compile information, create records, or recreate records that do not exist.

(4) Form or Format of Record to be Inspected/Copied. Actual records will be produced or used for viewing and/or copying. The nature of certain records and applicable confidentiality requirements, however, may result in providing the requested record/information in a form or format other than the original records form or format. In such cases, the records custodian may coordinate with the requestor to find an alternate form or means of providing access to the same desired record or information as available under the open records laws.

(5) Redaction.

(a) With the exception of records which are confidential in their entirety (for example, student education records protected by FERPA), if a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing the records for inspection or copies of the records.

(b) Whenever a redacted record is provided, the records custodian should provide the requestor with the basis for redaction. The basis given shall be general in nature and not disclose confidential information.

(6) Inspection of Records. If the request is to inspect records, the records custodian will arrange a location for the requestor to do so and may, under reasonable circumstances, require an appointment for inspection. Inspection must be made in the presence of the records custodian. Custody of the original record is not to be relinquished.

(7) Time Required to Produce Records. All efforts will be made to provide the records within a reasonable period of time. If the record cannot be produced within seven (7) business days (i.e., time is needed to determine if the records exist; additional time is needed to search for, retrieve, or otherwise gain access to records; or it will take additional time to redact confidential information from the record), the requestor shall be advised when the record(s) will be available using a Public Records Request Response. If the request will be denied, a Public Records Request Response must be sent within seven (7) business days.

Authority: T.C.A. § 10-7-503.

0240-07-01-.04 Copying of Public Records is added to Chapter 0240-07-01 Public Records – Inspecting and Copying and shall read as follows:

0240-07-01-.04 Copying of Public Records

(1) The records custodian will make copies, or arrange for copies to be made, as well as determine copy fees and charges in the most economic and efficient manner practicable. An itemized estimate of the charges to be assessed for copies and labor should be provided to the requestor using the Request to Inspect or Copy Public Records form prior to producing the requested copies. Payment of fees and charges are to be made in advance. A requestor will be allowed to make copies of records with a camera or a cell phone if the number of pages to be copied is twenty-five (25) pages or less.

(2) Copy Format

(a) Notwithstanding the form of the records, reproduction or copying of records shall be made in a form as best determined by the records custodian.

(b) Electronic data and documents will be produced in a read-only format.

(c) If the requested records exist electronically, but not in the format requested, or a new or modified computer program or application is necessary to put the records in a readable and reproducible format; or it is necessary to access backup files, the records custodian shall charge the requestor the actual costs incurred in producing the records in the format requested, or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format, or in accessing backup files.

(d) Records should be produced electronically whenever feasible as a means of utilizing the most cost effective method of producing records.

(3) If a records custodian reasonably determines that production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall notify the requestor by using the Public Records Request Response form that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable.

(4) If a records custodian discovers records responsive to a records request were omitted, the requestor should be contacted concerning the omission and the records produced as quickly as possible.

(5) Copies will be available for pickup at a location specified by the records custodian. At the requestor's request, and upon payment of postage, copies will be mailed to the requestor via USPS first-class mail.

(6) Fees and Charges.

(a) No fees or charges may be imposed for inspection of records, even if copies of records were required to be made to allow for redaction of confidential information.

(b) An itemized estimate of the fees and charges should be provided to the requestor. Payment of this amount must occur prior to copies being made. Payment in full of the actual costs must be made prior to release of the requested copies. Both the estimated charges and the actual charges may be included on the Request to Inspect or Copy Public Records form.

(c) MTSU will publish the per page copy charges and a schedule of any other costs. Labor charges will be calculated and imposed as allowed by the Office of Open Records Counsel.

(7) If the total amount of fees, labor/programming charges, and postage is less than twenty dollars ($20.00), the cost will be waived.

Authority: T.C.A. § 10-7-503.

0240-07-01-.05 Aggregation of Frequent and Multiple Requests is added to Chapter 0240-07-01 Public Records – Inspecting and Copying and shall read as follows:

0240-07-01-.05 Aggregation of Frequent and Multiple Requests

(1) MTSU will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the Office of Open Records Counsel when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.

(2) The level at which records requests will be aggregated is by office.

(3) The Coordinator is responsible for making the determination that a group of individuals are working in concert. The Coordinator or records custodian must inform the individuals of this determination and that they have the right to appeal the decision to the Office of Open Records Counsel.

Authority: T.C.A. § 10-7-503.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Andy Adams	X				
J.B. Baker	X				
Pete DeLay	X				
Darrell Freeman, Sr.	X				
Joey Jacobs	X				
Christine Karbowiak				X	
Stephen B. Smith	X				
Pamela Wright				X	
Tony Johnston	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on 12/11/2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 12-12-18

Signature: Heidi Zimmerman

Name of Officer: Heidi Zimmerman

Title of Officer: University Counsel

Subscribed and sworn to before me on: 12/12/18

Notary Public Signature: Sherry Preston

My commission expires on: 3/23/21

SHERRY PRESTON
STATE OF TENNESSEE NOTARY PUBLIC
RUTHERFORD COUNTY
MY COMMISSION EXPIRES 3-23-2021

Agency/Board/Commission: Middle Tennessee State University

Rule Chapter Number(s): Chapter 0240-07-01

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

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 1/3/19

Effective on: 4/3/19

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Intellectual and Developmental Disabilities
SUBJECT:	Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503(g)(2), as amended by 2018 Public Chapter 712
EFFECTIVE DATES:	April 2, 2019 through June 30, 2020
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This purpose of these rulemaking hearing rules is to codify, in the form of rules, the current process and procedures of the Department of Intellectual and Developmental Disabilities, as required by T.C.A. § 10-7-503(g)(2), as amended by 2018 Public Chapter 712, in order to provide economical and efficient access to public records of the department, in compliance with Tennessee Public Records Act ("TPRA"), except as otherwise provided by law.

NOTE: Rule not submitted in redline form, entire rule contains new language.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There were no comments from the public hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

These rules will have no fiscal impact on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These rules will have no fiscal 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 purpose of these rules is to codify in the form of rules the current process and procedures of the Department of Intellectual and Developmental Disabilities ("DIDD" or "department"), as required by T.C.A. § 10-7-503(g)(2), as amended by 2018 Public Chapter 712, in order to provide economical and efficient access to public records of the department, in compliance with the Tennessee Public Records Act ("TPRA"), except as otherwise provided by law.

(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;

T.C.A. § 10-7-503(g)(2), as amended by 2018 Public Chapter 712

(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;

Citizens of the State of Tennessee desiring to inspect and/or obtain copies of departmental records which are public records, and employees of the department, particularly its Public Records Request Coordinator and records custodians, will be the persons most directly affected by these rules.

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

None; however, Opinion No. 18-23 "Duties Under Tennessee Public Records Act" (May 30, 2018) is a concise discussion of the statutory duties of State or local government officials under TPRA.

(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;

The fiscal impact of these rules will be minimal.

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

Theresa C. Sloan, Esq., Assistant Commissioner and General Counsel; Bruce Wilson, Esq., Assistant General Counsel; Cara Kumari, Director of Communications

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

Theresa C. Sloan, Esq., Assistant Commissioner and General Counsel; Bruce Wilson, Esq., Assistant General Counsel; Cara Kumari, Director of Communications

(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

Office of General Counsel, UBS Tower, 8th Floor, 315 Deaderick Street, Nashville, TN 37219-9969; Theresa.C.Sloan@tn.gov, (615) 253-6811; Bruce.Wilson@tn.gov, (615) 770-1006; Cara.Kumari@tn.gov, (615) 253-2236

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

Not applicable

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-04-19
Rule ID(s): 8030
File Date: 1/2/19
Effective Date: 4/2/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Tennessee Department of Intellectual and Developmental Disabilities
Division:
Contact Person: Richard R. Prybilla, Esq.
Address: 400 Deaderick Street, 10th Floor, Citizens Plaza, Nashville, TN
Zip: 37243
Phone: 615-532-6526
Email: Richard.R.Prybilla@tn.gov

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0465-01-04	Public Records
Rule Number	**Rule Title**
0465-01-04-.01	Purpose of Rules
0465-01-04-.02	Effective Date
0465-01-04-.03	Legal Basis
0465-01-04-.04	Definitions
0465-01-04-.05	Access to Public Records
0465-01-04-.06	Requesting Access to Public Records
0465-01-04-.07	Responding to Public Records Requests
0465-01-04-.08	Requesting Access to Public Records
0465-01-04-.09	Redaction
0465-01-04-.10	Inspection of Records
0465-01-04-.11	Copies of Records
0465-01-04-.12	Fees and Charges
0465-01-04-.13	Aggregation of Frequent and Multiple Requests

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

0465-01-04-.01 Purpose and Application.

The purpose of these rules is to establish a process and procedures, pursuant to T.C.A. §§ 10-7-503(g) and 10-7-504, to provide economical and efficient access to public records of the Department of Intellectual and Developmental Disabilities ("DIDD" or "department"), in compliance with the Tennessee Public Records Act ("TPRA"), except as otherwise provided by law. These rules apply to employees of DIDD and any citizen of Tennessee requesting public records of DIDD.

Authority: T.C.A. §§ 4-3-2708, 10-7-503, 10-7-504, 33-1-303, 45 CFR Part 164, Subpart E. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.02 Effective Date.

The effective date of the rules set forth in this chapter shall be _____.

Authority: T.C.A. § 4-5-207. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.03 Legal Basis.

As directed by the Legislature, by January 1, 2019, state agencies and departments shall promulgate rules regarding public records in compliance with T.C.A. § 10-7-503(g).

Authority: T.C.A. § 10-7-503(g), as amended by 2018 Public Chapter 712. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.04 Definitions.

(1) The following terms as used in these rules shall have the meanings described below:

(a) "Office of Open Records Counsel" (OORC) means the office of the Tennessee Comptroller of the Treasury serving citizens, media and governmental entities as a resource for issues concerning Tennessee's public records laws.

(b) "Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by DIDD.

(c) "Public Records Request Coordinator" (PRRC) means the DIDD employee who has the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA and these rules. The Public Records Request Coordinator may also be a records custodian.

(d) "Records Custodians" means the employees of DIDD lawfully responsible for the direct custody and care of public records. The records custodians are not necessarily the original preparers or receivers of the records.

(e) "Requestor" means a person seeking access to a public record, whether it is for inspection or duplication.

(f) "Tennessee Public Records Act" (TPRA) means the statutes codified at T.C.A. §§ 10-7-501, et seq.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.05 Access to Public Records.

(1) DIDD public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state or federal law.

(2) Personnel of DIDD shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of these rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of DIDD, and the persons it supports, shall be protected as provided by current law.

(3) These rules shall be applied consistently throughout the various offices, departments, and/or divisions of DIDD, except that records requests directed to DIDD's Office of General Counsel will be handled in accordance with applicable law and procedural rules pertaining to privileged communications.

Authority: T.C.A. §§ 10-7-503, 33-1-303, 45 CFR Part 164, Subpart E. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.06 Requesting Access to Public Records

(1) Public record requests shall be made to the PRRC or his/her designee in order to ensure that public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.

(2) A request to view public records may be made to the PRRC orally or in writing using the "DIDD Public Records Request Form" found on the DIDD website. The form may be mailed to the PRRC's mailing address, or emailed or faxed to the PRRC at DIDD's Central Office. The PRRC may request contact information from the requestor for the purpose of providing any written communication required under the TPRA.

(3) Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the form referred to above.

(4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or, in the discretion of the PRRC, alternative acceptable form of ID showing the requestor's address) is required as a condition to inspect or receive copies of DIDD public records.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.07 Responding to Public Records Requests.

(1) Public Records Request Coordinator (PRRC)

(a) DIDD's designated PRRC is the person whose name and contact information appears on the DIDD Public Records Request Form. Contact information for the PRRC may also be found on DIDD's website.

(b) The PRRC shall review public record requests and make an initial determination of the following:

1. If the requestor provided evidence of Tennessee citizenship;

2. If the records requested are described with sufficient specificity to identify them; and

3. If DIDD is the custodian of the requested records.

(c) The PRRC shall acknowledge receipt of a records request by appropriate means and take any of the following appropriate actions:

1. Advise the requestor of these rules and requirements regarding:

a. Evidence of Tennessee citizenship;

b. The form required to request copies;

c. Fees; and

d. Aggregation of multiple or frequent requests.

2. If appropriate, deny the request in writing within seven (7) business days of receipt of the request, using the "DIDD Public Records Request Response Form", found on the DIDD website, providing the grounds for the denial, such as one or more of the following:

a. The requestor has not presented evidence of Tennessee citizenship;

b. The request lacks specificity;

c. A specified exemption, or state or federal law makes the record not subject to disclosure under the TPRA;

d. DIDD is not the custodian of the requested records; or

e. The records do not exist.

3. If appropriate, contact the requestor to see if the request can be narrowed.

4. Forward the records request to the appropriate DIDD records custodian.

5. If requested records are in the custody of a different government department or agency, and the PRRC knows the correct governmental entity, the PRRC will provide that information to the requestor with contact information for the PRRC for that entity, if known.

Authority: T.C.A. §§ 10-7-503, 33-1-303, 45 CFR Part 164, Subpart E. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.08 Records Custodian.

(1) Upon receiving a public records request, a DIDD records custodian shall promptly make requested public records not specifically exempt from disclosure available as required by T.C.A. § 10-7-503(a)(2). The custodian may notify the requestor of the time and place of inspection or availability of copies of the records for pickup using the DIDD Public Records Request Response Form or by other means. The custodian may also furnish copies of the requested records, subject to the payment of fees and charges, by sending them to the requestor along with the Public Records Request Response Form.

(2) If the records custodian is uncertain that an applicable exemption or state or federal law prohibiting disclosure applies, the custodian may consult with the PRRC or DIDD's Office of General Counsel.

(3) If it is not practicable to promptly make available for inspection or furnish copies of requested records, because additional time is necessary to determine whether the requested records exist, to search for, retrieve, or otherwise gain access to records, to determine whether the records are protected from disclosure, to redact records, or for other similar reasons, then the PRRC or records custodian shall, within seven (7) business days from receipt of the request by the PRRC, send the requestor the Public Records Request Response Form indicating the reason for the delay and an estimate of the time that will be necessary to produce the records or determine the proper response to the request.

(4) A denial by the records custodian shall be in writing, made within seven (7) business days from receipt of the request by the PRRC using the Public Records Request Response Form.

(5) If a records custodian, in consultation with the PRRC and/or Office of General Counsel, reasonably

determines that production of requested records should be segmented because the records request is for a large volume of records, or that additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments or groups and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the PRRC or records custodian should contact the requestor to see if the request can be narrowed.

(6) If a records custodian discovers records responsive to a prior records request were omitted, he/she should contact the requestor concerning the omission and produce the records as soon as practicable.

Authority: T.C.A. §§ 10-7-503, 33-1-303, 45 CFR Part 164, Subpart E. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.09 Redaction.

(1) If a DIDD record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If questions arise concerning redaction, the records custodian should coordinate with the PRRC or Office of General Counsel regarding review and redaction of records. If necessary, DIDD's attorneys may consult with the Office of Open Records Counsel (OORC) or with the Office of Attorney General and Reporter regarding this or other issues concerning records requests.

(2) Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Authority: T.C.A. §§ 10-7-503, 33-1-303, 45 CFR Part 164, Subpart E. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.10 Inspection of Records.

(1) There shall be no charge for inspection of open public records.

(2) The location for inspection of DIDD records shall be determined by the PRRC or the records custodian.

(3) The PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.11 Copies of Records.

(1) The PRRC and/or records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the PRRC or records custodian.

(3) Copies will be mailed to the requestor's address by U. S. Mail on request, and upon payment by the requestor of estimated postage charges and fees for copies and labor, unless other arrangements have been made in advance for billing the requestor for such fees or charges. Copies may also be emailed to the requestor on request, and upon payment of fees for copies and labor. If electronic copies are provided on a flash drive or other storage device, the requestor may be charged the department's out-of-pocket cost for such device.

(4) A requestor will not be allowed to make copies of records with personal equipment.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.12 Fees and Charges.

(1) Excessive fees and charges for copies of public records should not be used to hinder access to public records.

(2) Records custodians shall provide requestors with a good faith estimate of the fees and charges prior to producing the requested records.

(3) When fees and charges for copies and labor do not exceed $50, the fees may be waived. Requests for waivers for fees above $50 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of DIDD and for the public good. Fees associated with aggregated records requests will not be waived.

(4) Fees and charges for copies and labor are as follows:

(a) $0.15 per page for letter and legal size black and white copies.

(b) $0.50 per page for letter and legal size color copies.

(c) Labor charges when time exceeds 1 hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting or scanning records, will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.

(d) If an outside vendor is used, the actual costs assessed by the vendor.

(e) No duplication costs will be charged for requests resulting in 10 or fewer pages of records. No duplication costs will be charged for records provided electronically except when paper copies that did not already exist are required to be created in responding to the request, such as when a record must be printed to be redacted.

(f) Payment is to be made by check or money order payable to DIDD and mailed or hand delivered to DIDD Fiscal and Administrative Services.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

0465-01-04-.13 Aggregation of Frequent and Multiple Requests.

(1) DIDD will aggregate records requests in accordance with the "Reasonable Charges for Frequent and Multiple Requests" policy promulgated by the OORC, which may be found on the DIDD website, when four or more requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.

(2) Requests for any DIDD records, regardless of the type of records requested or whether the request is directed to, or specifies that the records requested pertain to, a local, regional or central office of the department, may be aggregated.

(3) The PRRC is responsible for making the determination that a group of individuals is working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

(4) Once the aggregation threshold is reached, the exemption for labor charges up to one hour specified in Rule 0465-01-04-.12(4) above does not apply for the second and subsequent requests.

Authority: T.C.A. § 10-7-503. Administrative History: Original rule filed _____, 2018, effective _____, 2018.

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the DIDD (board/commission/ other authority) on _____ (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: *(09/10/18)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(10/31/18)*

Date: Dec. 3, 2018

Signature: Debra K. Payne

Name of Officer: Debra K. Payne

Title of Officer: Commissioner of TN Department of Intellectual and Developmental Disabilities

Subscribed and sworn to before me on: 12/03/2018

Notary Public Signature: Erica T. Reed

My commission expires on: 04/18/2021

ERICA T. REED STATE OF TENNESSEE NOTARY PUBLIC RUTHERFORD COUNTY, TENN.

Agency/Board/Commission: TN Department of Intellectual and Developmental Disabilities

Rule Chapter Number(s): 0465-01-04

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.

Herbert H. Slatery III
Attorney General and Reporter

12/21/2018
Date

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Department of State Use Only

Filed with the Department of State on: 1/2/19

Effective on: 4/2/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Board of Regents
SUBJECT:	Access to Public Records
STATUTORY AUTHORITY:	Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act, specifically T.C.A. Section 10-7-503(9), requiring state agencies to replace current policy with rules.
EFFECTIVE DATES:	April 4, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act, specifically T.C.A. Section 10-7-503(9), requiring state agencies to promulgate rules regarding public records requests by January 1, 2019. These proposed rules will replace TBR public records policy now in place.

NOTE: New rule, no redline version.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Proposed rule does not affect small business, unless said business makes a request for copies of public records. Then said business will be required to submit payment for the Board of Regents efforts to produce copies of requested records. Small businesses are no more affected than any individual Tennessee citizen.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

No Expected 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;

Public Chapter No. 712 of the Public Acts of 2018 amended the Tennessee Public Records Act (TPRA), requiring state agencies to promulgate rules regarding public records requests by January 1, 2019. These rules will replace TBR public records policy, now in place.

(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;

Public Chapter No. 712 amended the TPRA, specifically T.C.A. § 10-7-503(g), requiring state agencies to replace current policy with rules.

(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;

Although this new rule will affect any person, firm, or corporation who makes a public records request pursuant to T.C.A. § 10-7-503, the promulgation of this rule will not significantly change how the TBR responds to public records requests.

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

None Known

(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;

There will be no probable increase or decrease in state and local government revenues and expenditures resulting from this new rule.

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

Mary Moody, General Counsel

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

Mary Moody, General Counsel

(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

Mary Moody
Office of General Counsel
1 Bridgestone Park, 3rd Floor
Nashville, TN 37214

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

None

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-11-19
Rule ID(s): 8097
File Date: 1/4/19
Effective Date: 4/4/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Board of Regents
Division:	Statewide Administrative Rule
Contact Person:	Mary Moody
Address:	Office of General Counsel 1 Bridgestone Park, 3rd Floor Nashville, Tennessee
Zip:	37214
Phone:	615-366-4438
Email:	Mary.Moody@tbr.edu

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0240-01-04	Access to Public Records of the Tennessee Board of Regents
Rule Number	**Rule Title**
0240-01-04-.01	Purpose and Scope of Authority
0240-01-04-.02	Definitions
0240-01-04-.03	General Accessibility of Public Records
0240-01-04-.04	Requesting Access to Public Records
0240-01-04-.05	Responding to Public Records Requests
0240-01-04-.06	Inspection of Records
0240-01-04-.07	Copies of Records
0240-01-04-.08	Fees and Charges and Procedures for Billing and Payment
0240-01-04-.09	Aggregation of Frequent and Multiple Requests
0240-01-04-.10	Confidentiality Exceptions

Rules of Tennessee Board of Regents
Chapter 0240-01-04
Access to Public Records of the Tennessee Board of Regents
New Rule

Table of Contents is added to Chapter 2040-01-04 Access to Public Records of the Tennessee Board of Regents and shall read as follow:

Table of Contents

0240-01-04-.01 Purpose and Scope of Authority
0240-01-04-.02 Definitions
0240-01-01-.03 General Accessibility of Public Records
0240-01-04-.04 Requesting Access to Public Records
0240-01-04-.05 Responding to Public Records Requests
0240-01-04-.06 Inspection of Records
0240-01-04-.07 Copies of Records
0240-01-04-.08 Fees and Charges and Procedures for Billing and Payment
0240-01-04-.09 Aggregation of Frequent and Multiple Requests
0240-01-04-.10 Confidentiality Exceptions

0240-01-04-.01 is added to Chapter 0240-01-04 Access to Public Records of the Tennessee Board of Regents, and shall read as follows:

0240-01-04-.01 Purpose and Scope of Authority

(1) In accordance with T.C.A. § 10-7-503(g), this rule is promulgated to provide economical and efficient access to public records as provided under the Tennessee Public Records Act (TPRA) in T.C.A. § 10-7-501 et. Seq.

Authority: T.C.A. §§ 10-7-501 et seq.,10-7-503 and 49-8-203

0240-01-04-.02 Definitions

(1) FERPA – The Family Educational rights and Privacy Act, codified in 20 U.S.C. § 1232(g).

(2) Institution – All Community colleges and colleges of applied technology governed by the Tennessee Board of Regents and the system office.

(3) Public Record – All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. See T.C.A. § 10-7-503(a)(1)(A).

(4) Records Custodian – The office, official or employee lawfully responsible for the direct custody and care of a public record. See T.C.A. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.

(5) Requestor – A person seeking access to a public record, whether it is for inspection or duplication.

(6) Other definitions exist in the body of this rule.

Authority: T.C.A. §§ 10-7-503 and 49-8-203; 20 U.S.C. § 1232(g)

0240-01-04-.03 General Accessibility of Public Records

(1) The TPRA The TPRA provides that all state, county and municipal records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the institutions governed by

the Tennessee Board of Regents are presumed to be open for inspection during the regular hours of the institution's business office, unless otherwise provided by law.

(2) Institution personnel shall provide timely and efficient access and assistance to persons requesting to view or receive copies of public records. No provisions of this rule shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the institution shall be protected as provided by current law. Concerns about this rule should be addressed to the Public Records Request Coordinator for The Tennessee Board of Regents or to the Tennessee Office of the Attorney General and Reporter.

(3) This rule is posted online on the TBR website at (TBR Open Records Rules). This rule shall be reviewed annually.

(4) This rule shall be applied consistently throughout the institutions and the TBR system office.

(5) Each institution shall designate a Public Records Request Coordinator ("PRRC") and notify the TBR System Office PRRC of that person's name and contact information.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.04 Requesting Access to Public Records

(1) Public record requests must be communicated to the appropriate Institution or TBR System Office PRRC, or designee, to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner. The contact information for the TBR System Office PRRC is:
Tennessee Board of Regents
Attn: Director of Communications
1 Bridgestone Park, 3rd Floor
Nashville, Tennessee 37214
Phone: 615-366-4417
Fax: 615-366-3910
OpenRecordsRequest@tbr.edu

(2) The Institution PRRC's, including institution, name, mailing address, phone number, fax number (if applicable), and email address, are identified on the TBR website at TBR Open Records.

(3) A PRRC must not require that requests for inspection only be made in writing. However, the PRRC may request a written request to facilitate recordkeeping and ensure accuracy in fulfilling the request. The PRRC should request a mailing [or email] address from the requestor for providing any written communication required under the TPRA.

(4) Requests for inspection may be made orally or in writing using the Public Records Request Form, located on the TBR website. Requests for inspection may be made in person or by mail, phone, fax, or email to the TBR System Office PRRC listed in paragraph (1), or any Institution PRRC.

(5) Requests for copies, or requests for inspection and copies, shall be made in writing using the attached Form. Requests for copies may be made in person or by mail, phone, fax, or email to the TBR System Office PRRC listed in paragraph (1), or any Institution PRRC.

(6) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.

(7) The meeting materials, minutes and webcasts of the meetings of the Board of Regents and its Committees held since November 2013 are available for viewing on the TBR website at Board Meeting Materials.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.05 Responding to Public Records Requests

(1) Public Record Request Coordinator

(a) The PRRC shall review public record requests and make an initial determination of the following:

1. If the requestor provided evidence of Tennessee citizenship;

2. If the records requested are described with sufficient specificity to identify them; and

3. If the Institution is the custodian of the records.

(b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

1. Advise the requestor of this rule and the elections made regarding:

(i) Proof of Tennessee citizenship;

(ii) Form(s) required for copies;

(iii) Fees (and labor threshold and waivers, if applicable); and

(iv) Aggregation of multiple or frequent requests.

2. If appropriate, deny the request in writing, providing the appropriate ground, such as one of the following:

(i) The requestor is not, or has not presented evidence of being a Tennessee citizen.

(ii) The request lacks specificity. (Offer to assist in clarification)

(iii) An exemption makes the record not subject to disclosure under the TPRA. (Provide the exemption in written denial.

(iv) The Institution is not the custodian of the requested records.

(v) The records do not exist.

3. The PRRCs shall report to the Board of Regents on an annual basis about the Institution's compliance with the TPRA pursuant to this rule, and shall make recommendations, if any, for improvement or changes to this rule.

(2) Records Custodian

(a) Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with T.C.A. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the Tennessee Attorney General and Reporter.

(b) If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form.

(c) If a records custodian denies a public record request, he or she shall deny the request in writing, and give the basis for the denial, which shall be general in nature and shall not disclose confidential information.

(d) If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.

(e) If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Redaction

(a) If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records. The records custodian and the PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.

(b) Whenever a redacted record is provided, a records custodian should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.06 Inspection of Records

(1) There shall be no charge for inspection of open public records.

(2) The location for inspection of records within the offices of the Institution should be determined by either the PRRC or the records custodian.

(3) The PRRC determines the location for the inspection of public records and may require an appointment for the inspection of public records. The PRRC must not allow a requestor to inspect original records outside the presence of an Institution employee designated by the PRRC. The PRRC must take reasonable precautions to ensure that the integrity of the public records is maintained during the inspection of the records.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.07 Copies of Records

(1) A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the records custodian.

(3) Upon pre-payment for postage in addition to the cost of the copies, copies will be delivered to the requestor's home address by the United States Postal Service. Another means of delivery, such as a commercial delivery service, may be chosen by the requestor, subject to the pre-payment of the cost of delivery.

(4) A requestor will not be allowed to make copies of records with personal equipment if the cost of production of the records exceeds fifty dollars ($50).

(5) If copies are to be provided by the Institution in an electronic format, the Institution must provide the flash drive or other device used to store the media, at the expense of the requestor. Under no circumstances may a requestor provide a data storage device that will be connected to the institution's IT system.

(6) Electronic records will be produced only in a read-only format.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.08 Fees and Charges and Procedures for Billing and Payment

(1) Fees and charges for copies of public records should not be used to hinder access to public records. No charges will be assessed for copies and duplicates unless the production costs exceed fifty dollars ($50).

(2) Records custodians shall provide requestors with an itemized estimate of the charges, using the appropriate form, prior to producing copies of records and may require pre-payment of such charges before producing requested records.

(3) When fees for copies and labor do not exceed one hundred dollars ($100), the fees may be waived.

(4) Requests for waivers for fees above $50 must be presented to the Institution's chief finance officer, who is authorized to determine if such waiver is in the best interest of the institution and for the public good. Fees associated with aggregated records requests will not be waived.

(5) Fees and charges for copies are as follows:

(a) $0.15 per page for 8 ½" x 11" and 8 ½" x 14" black and white copies.

(b) $0.50 per page for 8 ½" x 11" and 8 ½" x 14" color copies. Prior to copying records in color, the requestor must be advised that the record can be produced in color for the higher cost and consent to paying for color copies.

(c) The charge for a duplex copy must be the same as the charge for two (2) separate copies.

(d) If a copy of a public record is produced on a medium other than for 8½" x 11" or 8 ½" x 14" paper, then the PRRC must assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs and the cost of the alternative medium.

(e) If the requested records exist electronically, but not in the format requested or a new or modified computer program of application is necessary to put the records in a readable and reproducible format, or it is necessary to access backup files, the PRRC must charge the requestor the actual costs incurred in producing the records in the format requested, or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format, or in accessing backup files.

(f) The TPRA does not require the Institution to provide public records to a requestor in the format requested by the requestor if the record does not already exist in that format (e.g., a format that can be manipulated; paper instead of electronic).

(g) When providing electronic copies of public records, the PRRC may charge per-page copying costs only when paper copies that did not already exist were required to be produced in responding to the request, such as when an electronic public record must be printed and redacted.

(h) The PRRC may charge the actual costs for flash drives or similar storage devices on which electronic copies are provided.

(i) If an outside vendor is used, the actual costs assessed by the vendor must be charged to the requestor.

(6) Fees and Labor Costs

(a) The PRRC must charge the requestor the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold.

1. The "labor threshold" is the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the Institution in producing the records.

2. "Labor" means the employee time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.

3. The "hourly wage" is based upon the employee(s) base salary and does not include benefits.

(b) In calculating the labor costs to be charged to the requestor:

1. First, determine the number of hours each employee spent producing the requested public records;

2. Second, subtract the one (1) hour labor threshold from the number of hours the highest paid employee spent producing the request;

3. Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and

4. Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requestor.

(c) Labor costs should be tracked based on tenths of an hour, rounded down.

(d) The PRRC should strive to ensure that current employees with the lowest practicable hourly wage be used to fulfill public records requests. However, the PRRC has the discretion to determine that is more cost effective to utilize a higher-compensated employee if he/she can accomplish the task more efficiently, which may result in lower total labor costs.

(7) The PRRC has the discretion to determine how payment for production costs must be made (e.g., cash, check credit/debit card).

(8) Payment in advance will be required when costs are estimated to exceed fifty dollars ($50).

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.09 Aggregation of Frequent and Multiple Requests

(1) The Institution will aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).

(2) When Aggregating:

(a) The level at which records requests will be aggregated is at the institution level.

(b) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

(c) Routinely released and readily accessible records excluded from aggregation include, but are not limited to:

1. Materials for meetings of the Board of Regents and Board committees;

2. Other records determined by the PRRC.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

0240-01-04-.10 Confidentiality Exceptions

(1) Exceptions to the right to inspect or copy public records include, without limitation:

(a) Records made confidential by the TPRA itself or by other state law; and

(b) Records the Institution is required to keep confidential by federal statute or regulation as a condition for receipt of federal funds or for participation in a federally funded program.

Authority: T.C.A. §§ 49-8-203 and 10-7-503

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Gov. Bill Haslam				X	
Dr. MaryLou Apple	X				
Mr. Miles Burdine	X				
Mr. Gregory Duckett	X				
Ms. Youlanda Greene	X				
Mr. Tom Griscom	X				
Mr. Joey Hatch	X				
Honorable Candice McQueen				X	
Dr. Barbara Prescott	X				
Ms. Emily Reynolds	X				
R. Carlos Roman	X				
Ms. Leigh Shockey	X				
Mr. Bill Summons	X				
Honorable Jai Templeton	X				
Ms. Danni Varlan	X				
Mr. Tom White	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents on December 13, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

CAROL A TOMLINSON
STATE OF TENNESSEE NOTARY PUBLIC
RUTHERFORD COUNTY

Date: December 17, 2018

Signature: Mary G Moody

Name of Officer: Mary Moody

Title of Officer: General Counsel

Subscribed and sworn to before me on: 12-17-18

Notary Public Signature: Carol A. Tomlinson

My commission expires on: 2-27-21

Agency/Board/Commission: Tenn Board of Regents

Rule Chapter Number(s): 0240-01-01

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

Herbert H. Slatery III
Attorney General and Reporter

12/28/2018

Date

Department of State Use Only

Filed with the Department of State on: 1/4/19

Effective on: 4/4/19

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	TennCare
SUBJECT:	TennCare Medicaid
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105, 71 -5-109, and 71-5-197.
EFFECTIVE DATES:	April 3, 2019 through June 30, 2020
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	This rule is being amended to comply with T. C. A. § 71-5-197(f)(1) & (2) (PC 864, Acts 2018) passed by the General Assembly, which requires TennCare to promulgate rules related to prior authorization for opioid prescriptions, as well as certain opioid requirements for women of child-bearing age.

Public Hearing Comments

There were no comments on this rule.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule is not anticipated to have an effect on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule is not anticipated to 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;

This rule is being amended to comply with T. C. A. § 71-5-197(f)(1) & (2) (PC 864, Acts 2018) passed by the General Assembly, which requires TennCare to promulgate rules related to prior authorization for opioid prescriptions, as well as certain opioid requirements for women of child-bearing age.

(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 rule is lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-197.

(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;

The persons and entities most directly affected by this rule are TennCare enrollees, providers and the managed care contractors. The governmental entity most directly affected by this rule is the Division of TennCare, Tennessee Department of Finance & Administration.

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

The rule was approved by the Tennessee Attorney General. No additional opinion was given or requested.

(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;

The promulgation of this rule is not anticipated to have an impact on state and local government revenues and expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

(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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10118283

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Sequence Number: 01-07-19
Rule ID(s): 8047
File Date: 1/3/19
Effective Date: 4/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.04	Covered Services

Rules
Of
Tennessee Department of Finance and Administration
Bureau of TennCare

Chapter 1200-13-13
TennCare Medicaid

1200-13-.13-.04 Covered Services.

(1) Benefits covered under the managed care program

(c) Pharmacy

12. Opioid products for persons aged twenty-one (21) and older are restricted as follows:

(i) "Chronic opioid user" means:

(I) A TennCare enrollee whose TennCare paid claims data demonstrates that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(II) For a TennCare enrollee who has not been enrolled in TennCare long enough to demonstrate that he is a chronic opioid user as defined in Item (I), the enrollee may demonstrate that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date by supplying paid claims data and medical records from his previous healthcare provider(s) or health insurer(s).

(ii) "Non-chronic opioid user" means a TennCare enrollee whose TennCare paid claims data demonstrates he has received less than a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(iii) Non-chronic opioid users shall be eligible to receive covered prescription opioid products as follows:

(I) A maximum of fifteen (15) dosage days in any six (6) month period; and

(II) Daily dosage shall not exceed sixty (60) morphine milligram equivalents (MME) per day.

(iv) The restrictions in Subpart (iii) do not apply for enrollees with severe cancer pain undergoing active or palliative cancer treatment and enrollees in hospice and palliative care.

(v) The following considerations apply for enrollees who experience more frequent or aggressive pain episodes due to these specific clinical disease states:

(I) Enrollees with Sickle Cell may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period; and

(II) Severe burn victims may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

(vi) Notwithstanding the restrictions in Subpart (iii), enrollees residing in a Medicaid-certified Nursing Facility may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

(vii) Opioid prescriptions are subject to prior authorization following the first fill of a new opioid prescription.

(viii) For women of child-bearing age (between the ages of fifteen (15) and forty-four (44)) and ability, when prior authorization is required for an opioid prescription, the prescribing provider must submit information to the enrollee's PBM regarding the enrollee's pregnancy status and use of contraception or family planning methods, and the provision of counseling regarding the risks of becoming pregnant while receiving opioid medication. The information regarding pregnancy status and contraceptive use may, when appropriate, be based on self-reporting by the patient.

GW10118278

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare (board/commission/ other authority) on 12/05/2018 (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: 9/12/18

Rulemaking Hearing(s) Conducted on: (add more dates). 11/14/18

Date: 12/5/18

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Title of Officer: Division of TennCare
Tennessee Department of Finance and Administration

MICHELLE NEISLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 3-8-2021

Subscribed and sworn to before me on: December 5, 2018

Notary Public Signature: Michelle Neisler

My commission expires on: March 8, 2021

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-13

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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

12/27/2018
Date

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Filed with the Department of State on: 1/3/19

Effective on: 4/3/19

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	TennCare
SUBJECT:	TennCare Standard
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105, 71-5-109, and 71-5-197.
EFFECTIVE DATES:	April 3, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule is amended to comply with T. C. A. § 71-5-197(f)(1) & (2) (PC 864, Acts 2018), requiring TennCare to promulgate rules related to prior authorization for opioid prescriptions, as well as certain opioid requirements for women of child-bearing age.

Public Hearing Comments

There were no comments on this rule.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule is not anticipated to have an effect on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule is not anticipated to 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;

This rule is being amended to comply with T. C. A. § 71-5-197(f)(1) & (2) (PC 864, Acts 2018) passed by the General Assembly, which requires TennCare to promulgate rules related to prior authorization for opioid prescriptions, as well as certain opioid requirements for women of child-bearing age.

(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 rule is lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-197.

(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;

The persons and entities most directly affected by this rule are TennCare enrollees, providers and the managed care contractors. The governmental entity most directly affected by this rule is the Division of TennCare, Tennessee Department of Finance & Administration.

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

The rule was approved by the Tennessee Attorney General. No additional opinion was given or requested.

(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;

The promulgation of this rule is not anticipated to have an impact on state and local government revenues and expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

(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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10118288

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Sequence Number: 01-08-19
Rule ID(s): 8048
File Date: 1/3/19
Effective Date: 4/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):
X Amendment
____ New
____ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.04	Covered Services

Rules
Of
Tennessee Department of Finance and Administration
Bureau of TennCare

Chapter 1200-13-14
TennCare Standard

1200-13-.14-.04 Covered Services.

(1) Benefits covered under the managed care program

(c) Pharmacy

12. Opioid products for persons aged twenty-one (21) and older are restricted as follows:

(i) "Chronic opioid user" means:

(I) A TennCare enrollee whose TennCare paid claims data demonstrates that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(II) For a TennCare enrollee who has not been enrolled in TennCare long enough to demonstrate that he is a chronic opioid user as defined in Item (I), the enrollee may demonstrate that he has received at least a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date by supplying paid claims data and medical records from his previous healthcare provider(s) or health insurer(s).

(ii) "Non-chronic opioid user" means a TennCare enrollee whose TennCare paid claims data demonstrates he has received less than a ninety (90) day quantity of prescribed opioids in the one hundred eighty (180) day period immediately preceding the opioid's prescription date.

(iii) Non-chronic opioid users shall be eligible to receive covered prescription opioid products as follows:

(I) A maximum of fifteen (15) dosage days in any six (6) month period; and

(II) Daily dosage shall not exceed sixty (60) morphine milligram equivalents (MME) per day.

(iv) The restrictions in Subpart (iii) do not apply for enrollees with severe cancer pain undergoing active or palliative cancer treatment and enrollees in hospice and palliative care.

(v) The following considerations apply for enrollees who experience more frequent or aggressive pain episodes due to these specific clinical disease states:

(I) Enrollees with Sickle Cell may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period; and

(II) Severe burn victims may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

(vi) Notwithstanding the restrictions in Subpart (iii), enrollees residing in a Medicaid-certified Nursing Facility may receive up to forty-five (45) days of sixty (60) MME per day in any ninety (90) day period.

(vii) Opioid prescriptions are subject to prior authorization following the first fill of a new opioid prescription.

(viii) For women of child-bearing age (between the ages of fifteen (15) and forty-four (44)) and ability, when prior authorization is required for an opioid prescription, the prescribing provider must submit information to the enrollee's PBM regarding the enrollee's pregnancy status and use of contraception or family planning methods, and the provision of counseling regarding the risks of becoming pregnant while receiving opioid medication. The information regarding pregnancy status and contraceptive use may, when appropriate, be based on self-reporting by the patient.

GW10218278

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of TennCare (board/commission/ other authority) on 12/05/2018 (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: 9/12/18

Rulemaking Hearing(s) Conducted on: (add more dates). 11/14/18

Date: 12/5/18

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Title of Officer: Division of TennCare
Tennessee Department of Finance and Administration

MICHELLE NEISLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 3-8-2021

Subscribed and sworn to before me on: December 5. 2018

Notary Public Signature: Michelle Neisler

My commission expires on: March 8, 2021

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-14

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.

Herbert H. Slatery III
Attorney General and Reporter

12/28/2018
Date

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PUBLIC HEARINGS

Filed with the Department of State on: 1/3/19

Effective on: 4/3/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	TennCare
SUBJECT:	Public Records Access
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 10-7-503, and 71-5-105.
EFFECTIVE DATES:	April 3, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule is being amended to comply with T.C.A. § 10-7-503(g)(2) (PC 712, Acts 2018) passed by the General Assembly, which requires all state agencies to promulgate rules to govern access to public records.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Identification Requirement

   The commenter asked that the identification requirement to prove Tennessee citizenship be relaxed. TennCare declines based upon T.C.A. § 10-7-503(a)(7)(A)(vi), which states that a governmental entity may require any person making a request to view or copy a public record to present a government-issued photo identification. TennCare also allows alternate forms of identification on a case-by-case basis so that prompt access to public records will not be hindered.

2. Cost for Records

   The commenter asked for modification of the rules related to charges for the costs of preparation and redaction of public records. TennCare declines the recommendation to modify the rule at this time. As the state Medicaid agency, TennCare records generally contain confidential and/or privileged information under federal and state law which is not open for public inspection. Further, these statutes, including T.C.A. § 10-7-503(a)(5) require that TennCare perform redaction of confidential information and allows the costs for performing such redaction to be assessed prior to making records available to the public. While TennCare does not charge a fee for inspecting records, in some circumstances there may be costs associated with preparation for inspection, which includes staff time or vendor expenses to review and appropriately redact records as required by law.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule chapter is not anticipated to have an effect on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule chapter is not anticipated to 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;

This rule chapter is being amended to comply with T.C.A. § 10-7-503(g)(2) (PC 712, Acts 2018) passed by the General Assembly, which requires all state agencies to promulgate rules to govern access to public records.

(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 rule chapter is lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

(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;

The persons and entities most directly affected by this rule chapter are those desiring access to the Division of TennCare public records. The governmental entity most directly affected by this rule chapter is the Division of TennCare, Tennessee Department of Finance & Administration.

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

The rule chapter was approved by the Tennessee Attorney General. No additional opinion was given or requested.

(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;

The promulgation of this rule chapter is not anticipated to have an impact on state and local government revenues and expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

(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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10118283

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Sequence Number: 01-09-19
Rule ID(s): 8049
File Date: 1/3/19
Effective Date: 4/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-11	Public Records Access
Rule Number	**Rule Title**
1200-13-11-.01	Scope and Authority
1200-13-11-.02	Definitions
1200-13-11-.03	Requesting Access to Public Records
1200-13-11-.04	Responding to Public Records Requests
1200-13-11-.05	Inspection of Records
1200-13-11-.06	Copies of Records
1200-13-11-.07	Fees and Charges and Procedures for Billing and Payment
1200-13-11-.08	Aggregation of Frequent and Multiple Requests
1200-13-11-.09	TennCare Public Records Request Form

RULES
OF
TENNESSEE DEPARTMENT OF ~~HEALTH~~ FINANCE AND ADMINISTRATION
DIVISION OF ~~MEDICAID~~TENNCARE

CHAPTER 1200-13-11
~~ADMINISTRATIVE FEES~~ PUBLIC RECORDS ACCESS

~~**TABLE OF CONTENTS**~~

~~l200-13-11-.01 Fees~~

~~**1200-13-11-.01 FEES.**~~

~~(1) The Bureau of Medicaid hereby establishes fees for the reproduction of documents as follows:~~

~~Service~~	~~Fee~~
~~(a) Paper copy of records not requiring search (per page)~~	~~$ .75~~
~~(b) Paper copy of records requiring search (per page)~~	~~$1.50~~
~~(c) Microfiche copy of records, when available in microfiche (per microfiche page)~~	~~$ 3.04~~
~~(d) Computer programming time, when necessary to produce records not currently available or in a different form/format than currently available, in addition to the copy costs describe, in (a) or (c) above (per one-half hour)~~	~~$18.00~~
~~(e) The minimum total charge for computer programming time shall be~~	~~$108.00~~
~~(f) Computer operational time for producing computer generated documents (per minute)~~	~~$ 1.75~~
~~(g) Computer-generated output, paper, microfilm, microfiche, diskette, or tape (per 1,000 lines)~~	~~$ .60~~
~~(h) The minimum total charge for reproduction of documents shall be~~	~~*$ 5.00*~~
~~(i) In addition to the fees described above, a flat-rate charge for postage, shipping and handling will be assessed for documents which are mailed, faxed, shipped or otherwise transferred from the Bureau of Medicaid in any manner except hand-delivered at the Medicaid Administration building. This fee shall not be assessed for documents hand-delivered at the Medicaid Administration building.~~	~~$5.00~~

~~(2) The Bureau of Medicaid shall make records available for inspection during normal business hours upon request. When it is determined by the Bureau of Medicaid that considerable effort shall be required to locate or assemble records in a suitable work area, the request to inspect records shall be granted within a reasonable time. Such decision shall rest solely with the Bureau of Medicaid.~~

~~(3) The Bureau of Medicaid shall not permit records to be removed from the Bureau Administration building for purposes of inspection or reproduction except when directed to do so by court order.~~

~~(4) The Medicaid reproduction of documents fees and procedures for public inspections of records as set out in paragraph (1), (2), and (3) above will also be applicable to the Bureau of TennCare.~~

~~***Authority**: T.C.A. §§4-5-202, 71-5-105, 71-5-109 and Public Chapter 358 of the Acts of 1993. **Administrative History**: Original rule filed March 16, 1992; effective April 30, 1992. Amendment filed March 18, 1994; effective June 1, 1994. Amendment filed June 9, 1994; effective August 23, 1994.*~~

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1200-13-11-.01 Scope and Authority. The Tennessee Public Records Act (TPRA), T.C.A. §§ 10-7-501, et seq., requires each state agency to provide public access to agency records, unless exempted by the TPRA. This chapter establishes the process and procedure through which the Division of TennCare shall provide access to public records, pursuant to T.C.A. § 10-7-503.

(1) TennCare shall provide economical and efficient access to public records.

(2) TennCare public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by law.

(3) Personnel of TennCare shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records.

(4) The integrity and organization of public records, as well as the efficient and safe operation of TennCare, its programs and the individuals they support, shall be protected as provided by law.

(5) TennCare is not required to sort through files to compile information or to create or recreate a record that does not exist in order to satisfy a records request.

1200-13-11-.02 Definitions.

(1) Division of TennCare (TennCare). A state governmental agency administratively located within the Tennessee Department of Finance and Administration; includes references to all employees and subdivisions of the agency.

(2) Media. This term includes reporters, editors and journalists working with radio, television, online or any other news organizations, and serving the general public.

(3) Media Inquiries. Inquiries not related to the use or disclosure of public records, made by or on behalf of members of the media.

(4) Protected Health Information (PHI). Health information that identifies or may be used to identify an individual and that meets the following criteria:

(a) Information that is:

1. Transmitted by electronic media; or,

2. Maintained in electronic media; or,

3. Transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual; and,

(b) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and,

(c) Relates to the physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. See 45 C.F.R. § 160.103.

(5) Public Records. All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(6) Public Records Request Coordinator (PRRC). The individual, or individuals, designated in Rule .03, who has, or have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled according to the TPRA. The PRRC may also be a records custodian.

(7) Records Custodian. The office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

(8) Requestor. A person seeking access to a public record, whether it is for inspection or duplication.

(9) TennCare Public Records Request Form (Request Form). The form utilized by TennCare for processing a public records request, available on the TennCare website at https://www.tn.gov/tenncare/ or in Rule .09.

1200-13-11-.03 Requesting Access to Public Records.

(1) Public records requests shall be made to the PRRC or designee in order to ensure that public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. The TennCare designated PRRC is the Privacy and Public Records Officer, in the Office of General Counsel, whose contact information is available in the Request Form and as follows:

TennCare Public Records Request Coordinator
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
1-866-797-9469
fax: (615) 734-5289
email: Privacy.Records.TennCare@tn.gov

(2) Requests for inspection may be made orally or in writing using the Request Form, at the PRRC's mailing address, email address, fax or phone number. The PRRC shall request contact information from the requestor for providing any written communication required under the TPRA.

(3) Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the Request Form at the mail or email address or fax number provided.

(4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or at TennCare discretion an alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.

(5) Requests by journalists, media organizations, outlets, agencies and their representatives may be treated as Media Inquiries and responded to based on the procedures of the TennCare Communications Office. It is the policy of TennCare to respond only to public record requests by journalists who are Tennessee citizens. Interstate journalist and media organization requests shall be treated as Media Inquiries rather than as records requests and such requests will be responded to at the discretion of the TennCare Deputy Director

of Communications and Employee Relations. Contact information for the Communications Office is available on the TennCare website.

1200-13-11-.04 Responding to Public Records Requests.

(1) Public Records Request Coordinator.

(a) The PRRC shall review public records requests and make an initial determination of the following:

1. If the requestor provided evidence of Tennessee citizenship;

2. If the records requested are described with sufficient specificity to identify them; and

3. If TennCare is the custodian of the records.

(b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate actions:

1. Advise the requestor of this rule chapter and the decisions made regarding:

(i) Proof of Tennessee citizenship;

(ii) Any forms required for copies;

(iii) Fees; or,

(iv) Aggregation of multiple or frequent requests.

2. If appropriate, deny the request in writing, using the TennCare Public Records Request Response Form (Response Form) providing the appropriate ground for denial such as:

(i) The requestor is not, or has not presented evidence of being, a Tennessee citizen;

(ii) The request lacks specificity;

(iii) An exemption makes the record not subject to disclosure under the TPRA;

(iv) TennCare is not the custodian of the requested records; or,

(v) The records requested do not exist.

3. If appropriate, contact the requestor to see if the request can be narrowed or otherwise clarified.

4. Forward the records request to the appropriate records custodian within TennCare.

5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity.

(2) Records Custodian.

(a) Upon receiving a public records request, a TennCare records custodian in collaboration with the PRRC shall promptly make requested public records available using the Response Form. If the records custodian is uncertain that an applicable TPRA exemption applies, the custodian may consult with the PRRC or the Office of General Counsel.

(b) If not practicable to promptly provide requested records, a records custodian in collaboration with the PRRC shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Response Form indicating the reason for the delay and an estimate of the

time necessary to produce the records or determine the proper response to the request because additional time is necessary:

1. To determine whether the requested records exist;

2. To search for, retrieve, or otherwise gain access to records;

3. To determine whether the records are open;

4. To redact records; or

5. For other similar reasons.

(c) If a records custodian in collaboration with the PRRC denies a public records request, he or she shall deny the request in writing as provided above using the Response Form.

(d) If a records custodian in collaboration with the PRRC reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the Response Form should be used to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian or PRRC should contact the requestor to see if the request can be narrowed.

(e) If a records custodian discovers records responsive to a records request were omitted, the records custodian in collaboration with the PRRC should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Confidential Records and Redaction.

(a) If the PRRC determines that the requested records are considered confidential or privileged records under federal or state law and are not available for public inspection, the PRRC shall communicate the determination to the requester in writing. However, nothing in this rule chapter shall be construed to require TennCare to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.

(b) Individually identifying information and Protected Health Information (PHI) is generally not subject to public records requests. PHI and other sensitive information are confidential except as use or disclosure is permitted by The Privacy Act, HIPAA and other federal and state privacy rules.

(c) If a TennCare record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If questions arise concerning redaction, the records custodian should coordinate with the PRRC or counsel or other appropriate parties regarding review and redaction of records. The records custodian, the PRRC, and the Office of General Counsel may also consult with the Comptroller of the Treasury's Office of Open Records Counsel (OORC) or with the Office of the Attorney General and Reporter regarding this topic or others regarding open records requests.

(d) Whenever a redacted record is provided, a records custodian shall provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

1200-13-11-.05 Inspection of Records.

(1) There shall be no charge for inspection of open public records. However, charges may be incurred for preparation of records for inspection which may include labor costs and outside vendor expenses for collection and redaction as appropriate.

(2) The location for inspection of records shall be reasonably determined by the PRRC or the records custodian.

(3) Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

1200-13-11-.06 Copies of Records.

(1) The PRRC or records custodian shall promptly respond to a public records request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the PRRC or records custodian.

(3) Upon payment for postage and fees for copies and labor, copies will be delivered to the requestor's home address via the United States Postal Service. Additional permitted means of delivery may be agreed upon with the requestor, including email, electronic transfer or via disk, upon payment of fees for copies and labor and in the case of use of devices such as flash drives, the agency's cost for procuring such a device.

(4) Except for the use of a cell phone or handheld camera, a requestor will not be allowed to make copies of records with their personal equipment during the inspection of such records.

1200-13-11-.07 Fees and Charges and Procedures for Billing and Payment.

(1) Excessive fees and charges for copies of public records shall not be used to hinder access to public records.

(2) Records custodians in collaboration with the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and shall require pre-payment of such charges before producing requested records.

(3) When fees for copies and labor do not exceed $50.00, the fees will be waived. Requests for waivers for fees above $50.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TennCare and for the public good. Fees associated with aggregated records requests will not be waived.

(4) Fees and charges for copies are as follows:

(a) $0.15 per page for letter- and legal-size black and white copies.

(b) $0.50 per page for letter- and legal-size color copies.

(c) Shipping or mailing costs in excess of $15.00.

(d) Labor when time exceeds 1 hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting or scanning records. The cost will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.

(e) If an outside vendor is used, the actual costs assessed by the vendor.

(f) If transfer is performed via disk, such as a flash drive, the agency's cost for procuring such a device.

(5) No duplication costs will be charged for requests for less than 10 pages.

(6) Payment is to be made by check or money order payable to TennCare and presented to the PRRC via mail or hand delivery, at the address provided in the Request and Response Forms.

1200-13-11-.08 Aggregation of Frequent and Multiple Requests.

(1) TennCare will aggregate record requests according to the Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.

(2) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

(3) Requests for any TennCare records, regardless of the type of records requested or whether the request pertains to any office or sub-division of the agency, may be aggregated.

(4) Once the aggregation threshold is reached, the exemption for labor charges up to one hour specified above does not apply for any ongoing and subsequent requests.

1200-13-11-.09 TennCare Public Records Request Form. The following form is utilized by TennCare for processing a public records request. A requestor may use a copy of the form produced below or the electronic version of the form available on the TennCare website at https://www.tn.gov/tenncare/

TENNCARE PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: TennCare Public Records Request Coordinator
Department of Finance and Administration, Division of TennCare
310 Great Circle Road
Nashville, TN 37243
1-866-797-9469, fax (615) 734-5289
email the completed form to Privacy.Records.TennCare@tn.gov

From: Requestor Name: _____
Residence address: _____
Mailing or delivery information: _____
_____
Phone: _____ Email: _____

Is the requestor a Tennessee citizen? Yes No (A copy of a valid driver's license or other evidence showing requestor's address is required prior to access to public records.)

Request: Inspection (The TPRA does not permit copying fees or require a written request for inspection only. Fees may be assessed for redaction as appropriate.)

Copies/Duplicates (There is no fee for requests for records of less than 10 pages and labor charges of one hour or less. If fees are to be assessed, the requestor has a right to receive a good faith estimate prior to receiving the documents requested. More details as to fees and charges may be found in the TennCare Public Records Policy.)

Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $ _____ ? If so, initial here: _____.

Delivery preference: On-Site Pick-Up USPS First-Class Mail
Electronic Other: _____

Records Requested:

Provide a detailed description of the records requested, including:
(1) type of records;
(2) timeframe or dates for the records sought; and
(3) subject matter or key words related to the records.

Under the TPRA, records requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your records request must provide enough detail to enable the records custodian responding to the request to identify the specific records requested.

Description: _____

_____

Signature of Requestor and Date Submitted

TENNCARE OFFICE USE ONLY

Received by: _____ Date and time received: _____

Notes:

GW10118241redline

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Dept of Finance & Administration Division of TennCare (board/commission/ other authority) on 10/10/18 (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: 7/27/18

Rulemaking Hearing(s) Conducted on: (add more dates). 9/18/18

Date: 10/10/18

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.
Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 10/18/18

Notary Public Signature: Krista L. Washburn

My commission expires on: 12/5/18

KRISTA L. WASHBURN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-11

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.

Herbert H. Slatery III
Attorney General and Reporter

12/27/2018
Date

Department of State Use Only

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PUBLIC CHAPTERS

Filed with the Department of State on: 1/3/19

Effective on: 4/3/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	TennCare
SUBJECT:	Public Records Access
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 10-7-503, and 71-5-105.
EFFECTIVE DATES:	April 3, 2019 through June 30, 2020
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule is being amended to comply with T.C.A. § 10-7-503(g)(2) (PC 712, Acts 2018) passed by the General Assembly, which requires all state agencies to promulgate rules to govern access to public records.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Identification Requirement

   The commenter asked that the identification requirement to prove Tennessee citizenship be relaxed. TennCare declines based upon T.C.A. § 10-7-503(a)(7)(A)(vi), which states that a governmental entity may require any person making a request to view or copy a public record to present a government-issued photo identification. TennCare also allows alternate forms of identification on a case-by-case basis so that prompt access to public records will not be hindered.

2. Cost for Records

   The commenter asked for modification of the rules related to charges for the costs of preparation and redaction of public records. TennCare declines the recommendation to modify the rule at this time. As the state Medicaid agency, TennCare records generally contain confidential and/or privileged information under federal and state law which is not open for public inspection. Further, these statutes, including T.C.A. § 10-7-503(a)(5) require that TennCare perform redaction of confidential information and allows the costs for performing such redaction to be assessed prior to making records available to the public. While TennCare does not charge a fee for inspecting records, in some circumstances there may be costs associated with preparation for inspection, which includes staff time or vendor expenses to review and appropriately redact records as required by law.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule chapter is not anticipated to have an effect on small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule chapter is not anticipated to 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;

This rule chapter is being amended to comply with T.C.A. § 10-7-503(g)(2) (PC 712, Acts 2018) passed by the General Assembly, which requires all state agencies to promulgate rules to govern access to public records.

(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 rule chapter is lawfully adopted by the Division of TennCare in accordance with T.C.A. §§ 4-5-202, 10-7-503 and 71-5-105.

(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;

The persons and entities most directly affected by this rule chapter are those desiring access to the Division of TennCare public records. The governmental entity most directly affected by this rule chapter is the Division of TennCare, Tennessee Department of Finance & Administration.

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

The rule chapter was approved by the Tennessee Attorney General. No additional opinion was given or requested.

(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;

The promulgation of this rule chapter is not anticipated to have an impact on state and local government revenues and expenditures.

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

Donna K. Tidwell
Deputy General Counsel

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

Donna K. Tidwell
Deputy General Counsel

(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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6852
donna.tidwell@tn.gov

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

GW10118283

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-09-19
Rule ID(s): 8049
File Date: 1/3/19
Effective Date: 4/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Division of TennCare
Contact Person:	George Woods
Address:	Division of TennCare 310 Great Circle Road Nashville, TN 37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-11	Public Records Access
Rule Number	**Rule Title**
1200-13-11-.01	Scope and Authority
1200-13-11-.02	Definitions
1200-13-11-.03	Requesting Access to Public Records
1200-13-11-.04	Responding to Public Records Requests
1200-13-11-.05	Inspection of Records
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RULES
OF
TENNESSEE DEPARTMENT OF ~~HEALTH~~ FINANCE AND ADMINISTRATION
DIVISION OF ~~MEDICAID~~TENNCARE

CHAPTER 1200-13-11
~~ADMINISTRATIVE FEES~~ PUBLIC RECORDS ACCESS

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~~l200-13-11-.01 Fees~~

~~**1200-13-11-.01 FEES.**~~

~~(1) The Bureau of Medicaid hereby establishes fees for the reproduction of documents as follows:~~

~~Service~~	~~Fee~~
~~(a) Paper copy of records not requiring search (per page)~~	~~$ .75~~
~~(b) Paper copy of records requiring search (per page)~~	~~$1.50~~
~~(c) Microfiche copy of records, when available in microfiche (per microfiche page)~~	~~$ 3.04~~
~~(d) Computer programming time, when necessary to produce records not currently available or in a different form/format than currently available, in addition to the copy costs describe, in (a) or (c) above (per one-half hour)~~	~~$18.00~~
~~(e) The minimum total charge for computer programming time shall be~~	~~$108.00~~
~~(f) Computer operational time for producing computer generated documents (per minute)~~	~~$ 1.75~~
~~(g) Computer-generated output, paper, microfilm, microfiche, diskette, or tape (per 1,000 lines)~~	~~$ .60~~
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~~(4) The Medicaid reproduction of documents fees and procedures for public inspections of records as set out in paragraph (1), (2), and (3) above will also be applicable to the Bureau of TennCare.~~

~~***Authority**: T.C.A. §§4-5-202, 71-5-105, 71-5-109 and Public Chapter 358 of the Acts of 1993. **Administrative History**: Original rule filed March 16, 1992; effective April 30, 1992. Amendment filed March 18, 1994; effective June 1, 1994. Amendment filed June 9, 1994; effective August 23, 1994.*~~

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(5) TennCare is not required to sort through files to compile information or to create or recreate a record that does not exist in order to satisfy a records request.

1200-13-11-.02 Definitions.

(1) Division of TennCare (TennCare). A state governmental agency administratively located within the Tennessee Department of Finance and Administration; includes references to all employees and subdivisions of the agency.

(2) Media. This term includes reporters, editors and journalists working with radio, television, online or any other news organizations, and serving the general public.

(3) Media Inquiries. Inquiries not related to the use or disclosure of public records, made by or on behalf of members of the media.

(4) Protected Health Information (PHI). Health information that identifies or may be used to identify an individual and that meets the following criteria:

(a) Information that is:

1. Transmitted by electronic media; or,

2. Maintained in electronic media; or,

3. Transmitted or maintained in any other form or medium, including demographic information that identifies or may be used to identify an individual; and,

(b) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and,

(c) Relates to the physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. See 45 C.F.R. § 160.103.

(5) Public Records. All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(6) Public Records Request Coordinator (PRRC). The individual, or individuals, designated in Rule .03, who has, or have, the responsibility to ensure public records requests are routed to the appropriate records custodian and are fulfilled according to the TPRA. The PRRC may also be a records custodian.

(7) Records Custodian. The office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

(8) Requestor. A person seeking access to a public record, whether it is for inspection or duplication.

(9) TennCare Public Records Request Form (Request Form). The form utilized by TennCare for processing a public records request, available on the TennCare website at https://www.tn.gov/tenncare/ or in Rule .09.

1200-13-11-.03 Requesting Access to Public Records.

(1) Public records requests shall be made to the PRRC or designee in order to ensure that public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. The TennCare designated PRRC is the Privacy and Public Records Officer, in the Office of General Counsel, whose contact information is available in the Request Form and as follows:

TennCare Public Records Request Coordinator
Department of Finance and Administration
Division of TennCare
310 Great Circle Road
Nashville, TN 37243
1-866-797-9469
fax: (615) 734-5289
email: Privacy.Records.TennCare@tn.gov

(2) Requests for inspection may be made orally or in writing using the Request Form, at the PRRC's mailing address, email address, fax or phone number. The PRRC shall request contact information from the requestor for providing any written communication required under the TPRA.

(3) Requests for copies, or requests for inspection and copies, shall be made to the PRRC in writing using the Request Form at the mail or email address or fax number provided.

(4) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or at TennCare discretion an alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.

(5) Requests by journalists, media organizations, outlets, agencies and their representatives may be treated as Media Inquiries and responded to based on the procedures of the TennCare Communications Office. It is the policy of TennCare to respond only to public record requests by journalists who are Tennessee citizens. Interstate journalist and media organization requests shall be treated as Media Inquiries rather than as records requests and such requests will be responded to at the discretion of the TennCare Deputy Director

of Communications and Employee Relations. Contact information for the Communications Office is available on the TennCare website.

1200-13-11-.04 Responding to Public Records Requests.

(1) Public Records Request Coordinator.

(a) The PRRC shall review public records requests and make an initial determination of the following:

1. If the requestor provided evidence of Tennessee citizenship;

2. If the records requested are described with sufficient specificity to identify them; and

3. If TennCare is the custodian of the records.

(b) The PRRC shall acknowledge receipt of the request and take any of the following appropriate actions:

1. Advise the requestor of this rule chapter and the decisions made regarding:

(i) Proof of Tennessee citizenship;

(ii) Any forms required for copies;

(iii) Fees; or,

(iv) Aggregation of multiple or frequent requests.

2. If appropriate, deny the request in writing, using the TennCare Public Records Request Response Form (Response Form) providing the appropriate ground for denial such as:

(i) The requestor is not, or has not presented evidence of being, a Tennessee citizen;

(ii) The request lacks specificity;

(iii) An exemption makes the record not subject to disclosure under the TPRA;

(iv) TennCare is not the custodian of the requested records; or,

(v) The records requested do not exist.

3. If appropriate, contact the requestor to see if the request can be narrowed or otherwise clarified.

4. Forward the records request to the appropriate records custodian within TennCare.

5. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity.

(2) Records Custodian.

(a) Upon receiving a public records request, a TennCare records custodian in collaboration with the PRRC shall promptly make requested public records available using the Response Form. If the records custodian is uncertain that an applicable TPRA exemption applies, the custodian may consult with the PRRC or the Office of General Counsel.

(b) If not practicable to promptly provide requested records, a records custodian in collaboration with the PRRC shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Response Form indicating the reason for the delay and an estimate of the

time necessary to produce the records or determine the proper response to the request because additional time is necessary:

1. To determine whether the requested records exist;

2. To search for, retrieve, or otherwise gain access to records;

3. To determine whether the records are open;

4. To redact records; or

5. For other similar reasons.

(c) If a records custodian in collaboration with the PRRC denies a public records request, he or she shall deny the request in writing as provided above using the Response Form.

(d) If a records custodian in collaboration with the PRRC reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the Response Form should be used to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian or PRRC should contact the requestor to see if the request can be narrowed.

(e) If a records custodian discovers records responsive to a records request were omitted, the records custodian in collaboration with the PRRC should contact the requestor concerning the omission and produce the records as quickly as practicable.

(3) Confidential Records and Redaction.

(a) If the PRRC determines that the requested records are considered confidential or privileged records under federal or state law and are not available for public inspection, the PRRC shall communicate the determination to the requester in writing. However, nothing in this rule chapter shall be construed to require TennCare to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.

(b) Individually identifying information and Protected Health Information (PHI) is generally not subject to public records requests. PHI and other sensitive information are confidential except as use or disclosure is permitted by The Privacy Act, HIPAA and other federal and state privacy rules.

(c) If a TennCare record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access or copies. If questions arise concerning redaction, the records custodian should coordinate with the PRRC or counsel or other appropriate parties regarding review and redaction of records. The records custodian, the PRRC, and the Office of General Counsel may also consult with the Comptroller of the Treasury's Office of Open Records Counsel (OORC) or with the Office of the Attorney General and Reporter regarding this topic or others regarding open records requests.

(d) Whenever a redacted record is provided, a records custodian shall provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

1200-13-11-.05 Inspection of Records.

(1) There shall be no charge for inspection of open public records. However, charges may be incurred for preparation of records for inspection which may include labor costs and outside vendor expenses for collection and redaction as appropriate.

(2) The location for inspection of records shall be reasonably determined by the PRRC or the records custodian.

(3) Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

1200-13-11-.06 Copies of Records.

(1) The PRRC or records custodian shall promptly respond to a public records request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the PRRC or records custodian.

(3) Upon payment for postage and fees for copies and labor, copies will be delivered to the requestor's home address via the United States Postal Service. Additional permitted means of delivery may be agreed upon with the requestor, including email, electronic transfer or via disk, upon payment of fees for copies and labor and in the case of use of devices such as flash drives, the agency's cost for procuring such a device.

(4) Except for the use of a cell phone or handheld camera, a requestor will not be allowed to make copies of records with their personal equipment during the inspection of such records.

1200-13-11-.07 Fees and Charges and Procedures for Billing and Payment.

(1) Excessive fees and charges for copies of public records shall not be used to hinder access to public records.

(2) Records custodians in collaboration with the PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and shall require pre-payment of such charges before producing requested records.

(3) When fees for copies and labor do not exceed $50.00, the fees will be waived. Requests for waivers for fees above $50.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TennCare and for the public good. Fees associated with aggregated records requests will not be waived.

(4) Fees and charges for copies are as follows:

(a) $0.15 per page for letter- and legal-size black and white copies.

(b) $0.50 per page for letter- and legal-size color copies.

(c) Shipping or mailing costs in excess of $15.00.

(d) Labor when time exceeds 1 hour for time reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, reproducing, redacting or scanning records. The cost will vary depending on the hourly rates of the employee(s) doing the work and may include the time of an attorney reasonably necessary to review records and redactions to ensure compliance with confidentiality requirements of state and federal law.

(e) If an outside vendor is used, the actual costs assessed by the vendor.

(f) If transfer is performed via disk, such as a flash drive, the agency's cost for procuring such a device.

(5) No duplication costs will be charged for requests for less than 10 pages.

(6) Payment is to be made by check or money order payable to TennCare and presented to the PRRC via mail or hand delivery, at the address provided in the Request and Response Forms.

1200-13-11-.08 Aggregation of Frequent and Multiple Requests.

(1) TennCare will aggregate record requests according to the Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.

(2) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

(3) Requests for any TennCare records, regardless of the type of records requested or whether the request pertains to any office or sub-division of the agency, may be aggregated.

(4) Once the aggregation threshold is reached, the exemption for labor charges up to one hour specified above does not apply for any ongoing and subsequent requests.

1200-13-11-.09 TennCare Public Records Request Form. The following form is utilized by TennCare for processing a public records request. A requestor may use a copy of the form produced below or the electronic version of the form available on the TennCare website at https://www.tn.gov/tenncare/

TENNCARE PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: TennCare Public Records Request Coordinator
Department of Finance and Administration, Division of TennCare
310 Great Circle Road
Nashville, TN 37243
1-866-797-9469, fax (615) 734-5289
email the completed form to Privacy.Records.TennCare@tn.gov

From: Requestor Name: _____
Residence address: _____
Mailing or delivery information: _____
_____
Phone: _____ Email: _____

Is the requestor a Tennessee citizen? Yes No (A copy of a valid driver's license or other evidence showing requestor's address is required prior to access to public records.)

Request: Inspection (The TPRA does not permit copying fees or require a written request for inspection only. Fees may be assessed for redaction as appropriate.)

Copies/Duplicates (There is no fee for requests for records of less than 10 pages and labor charges of one hour or less. If fees are to be assessed, the requestor has a right to receive a good faith estimate prior to receiving the documents requested. More details as to fees and charges may be found in the TennCare Public Records Policy.)

Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $ _____ ? If so, initial here: _____.

Delivery preference: On-Site Pick-Up USPS First-Class Mail
Electronic Other: _____

Records Requested:

Provide a detailed description of the records requested, including:
(1) type of records;
(2) timeframe or dates for the records sought; and
(3) subject matter or key words related to the records.

Under the TPRA, records requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your records request must provide enough detail to enable the records custodian responding to the request to identify the specific records requested.

Description: _____

_____

Signature of Requestor and Date Submitted

TENNCARE OFFICE USE ONLY

Received by: _____ Date and time received: _____

Notes:

GW10118241redline

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Dept of Finance & Administration Division of TennCare (board/commission/ other authority) on 10/10/18 (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: 7/27/18

Rulemaking Hearing(s) Conducted on: (add more dates). 9/18/18

Date: 10/10/18

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.
Division of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 10/18/18

Notary Public Signature: Krista L. Washburn

My commission expires on: 12/5/18

KRISTA L. WASHBURN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission: Division of TennCare

Rule Chapter Number(s): 1200-13-11

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.

Herbert H. Slatery III
Attorney General and Reporter

12/27/2018
Date

Department of State Use Only

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PUBLIC CHAPTERS

Filed with the Department of State on: 1/3/19

Effective on: 4/3/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Parole
DIVISION:	Legal
SUBJECT:	Conduct of Parole Proceedings
STATUTORY AUTHORITY:	Public Chapter No. 712 of the 110th General Assembly, Public Chapter No. 727 of the 107th General Assembly, and Public Chapter No. 162 of the 110th General Assembly.
EFFECTIVE DATES:	March 14, 2019 through June 30, 2019
FISCAL IMPACT:	There is no estimated impact on state and local government revenues or expenditures resulting from the promulgation of this rule. The rule being promulgated is reflective of current policy and practices of the Board.
STAFF RULE ABSTRACT:	Pursuant to Public Chapter No. 727 of the 107th General Assembly, community supervision of adult offenders on probation or parole was transferred to the Department of Correction, and the name of the agency was changed to the Board of Parole. This update to the Rules of the Board of Parole deletes and/or changes references to community supervision of adult offenders, as well as corrects the name of the agency, in order to reflect current law. Pursuant to Public Chapter No. 712 of the 110th General Assembly, each state agency and department is required to promulgate rules that reflect current Public Records law and policy, as contained in the Model Public Records Policy published by the Office of Open Records Counsel. This update to Board of Parole Rules is being done to comply with this requirement. Pursuant to Public Chapter No. 162 of the 110th General Assembly, a new appeal process was mandated for the review of revocation and rescission cases under certain circumstances. This change to Board of Parole rules reflects the statutory mandate as well as current policy and practices.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(Insert statement here)

To the best of this Agency's knowledge and belief, none of these proposed rule changes will affect small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

(Insert statement here)

To the best of this Agency's knowledge and belief, none of these proposed rule changes will affect 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;

Pursuant to Public Chapter 727 of the 107th General Assembly, community supervision of adult offenders on probation or parole was transferred to the Department of Correction, and the name of the agency was changed to the Board of Parole. This update to the Rules of the Board of Parole deletes and/or changes references to community supervision of adult offenders, as well as corrects the name of the agency, in order to reflect current law.

Pursuant to Public Chapter 712 of the 110th General Assembly, each state agency and department is required to promulgate rules that reflect current Public Records law and policy, as contained in the Model Public Records Policy published by the Office of Open Records Counsel. This update to Board of Parole Rules is being done to comply with this requirement.

Pursuant to Public Chapter 162 of the 110th General Assembly, a new appeal process was mandated for the review of revocation and rescission cases under certain circumstances. This change to Board of Parole rules reflects the statutory mandate as well as current policy and practices.

(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;

Public Chapter 712 of the 110th General Assembly, Public Chapter 727 of the 107th General Assembly, and Public Chapter 162 of the 110th General Assembly.

(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;

The Tennessee Board of Parole, the Tennessee Department of Correction, the Tennessee Office of Open Records Counsel, adult offenders in the custody of the Tennessee Department of Correction eligible for parole consideration, adult offenders in the custody of the Tennessee Department of Correction currently on parole release status, and members of the public requesting to inspect and/or copy public records in the custody of the Board of Parole. The Board of Parole has received no indication of the position of any of these entities with regard to these rule changes.

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

(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;

There is no estimated impact on state and local government revenues or expenditures resulting from promulgation of this rule. The rule being promulgated is reflective of current policy and practices of the Board.

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

Jim Purviance: Executive Director of the Tennessee Board of Parole, Rob Clark: General Counsel

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

Jim Purviance: Executive Director of the Tennessee Board of Parole, Rob Clark: General Counsel

(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

Jim Purviance, Executive Director: 404 James Robertson Parkway, Suite 1300, Nashville, Tennessee 37219 615-741-9941 Rob Clark, General Counsel: 404 James Robertson Parkway, Suite 1300, Nashville, Tennessee 37219 615-253-1211

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

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 12-22-18
Rule ID(s): 7871
File Date: 12/14/18
Effective Date: 3/14/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Board of Parole
Division:	Legal
Contact Person:	Rob Clark
Address:	404 James Robertson Parkway, Suite 1300
Zip:	37243
Phone:	615-253-1211
Email:	rob.clark@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.01	Short Title

Chapter Number	**Chapter Title**
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.02	Statements of Intent

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.03	Definitions

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.04	Administration of the Board of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.05	General Board Policy

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.06	Parole Hearings

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.07	Board Criteria for Granting or Denying Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.08	The Parole Hearing Process

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.09	Release on Parole Date

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.10	Psychological Evaluations

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.11	Detainers

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.12	Rescission of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.13	Discharge of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.14	Revocation of Parole

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.15	Confidentiality of Parole and Clemency Records; Confidentiality of Employee Personnel Records

Chapter Number	Chapter Title
1100-01-01	Conduct of Parole Proceedings
Rule Number	**Rule Title**
1100-01-01-.16	Duties and Procedures of the Board in Executive Clemency

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to
http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

1100-01-01-.01 Short Title is being changed to reflect the correct name of the agency from "the Board of Probation and Parole" to "the Board of Parole." T.C.A. 40-28-104.

1100-01-01-.02 Statements of Intent is being changed to reflect that the Board no longer handles supervision of offenders or overseeing Probation/Parole officers. T.C.A. 40-28-101, 40-28-103 through 40-28-105, 40-28-115, 40-28-116, 40-28-117, 40-28-118, 40-35-501, 40-35-503 .

1100-01-01-.03 Definitions is being changed to reflect the changes due to the Board no longer handling supervision of offenders or overseeing Probation/Parole officers and reflecting that such authority resides with the Department of Correction. T.C.A. 40-27-101, 40-27-102, 40-27-104, 40-27-109, 40-28-102 through 40-28-105, 4-28-117, 40-28-121, and 40-28-122.

1100-01-01-.04 Administration of the Board of Parole is being changed to reflect the changes due to the Board no longer handling supervision of offenders or overseeing of Probation/Parole officers. T.C.A. 40-28-101,40-28-103 through 40-28-107, and 40-28-119.

1100-01-01-.05 General Board Policy is being changed to comply with the new Public Records Requests laws and incorporate current agency policy for responding to Public Record Requests. T.C.A. 10-7-101 et seq, 10-7-503, 40-28-104, 40-28-105, 40-28-119, and 40-28-502.

1100-01-01-.06 Parole Hearings is being changed to reflect that the Board no longer oversees Probation/Parole officers. T.C.A. 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-118, 40-28-119, 40-35-501, 40-28-503, and 40-28-505.

1100-01-01-.07 Board Criteria for Granting or Denying Parole is being changed to reflect appropriate citations to statutory authority. T.C.A. 40-28-104, 40-28-105, 40-28-106, 40-28-114, 40-28-116, 40-28-118, 40-28-504, and 40-35-503.

1100-01-01-.08 The Parole Hearing Process is being changed to include a process for review under TCA 40-28-122(g), a new law that was passed in 2017. T.C.A. 40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-119, 40-28-122, 40-35-501, and 40-35-503.

1100-01-01-.09 Release on Parole Date is not being changed.

1100-01-01-.10 Psychological Evaluations is not being changed.

1100-01-01-.11 Detainers is not being changed.

1100-01-01-.12 Rescission of Parole is not being changed.

1100-01-01-.13 Discharge of Parole is being changed to reflect appropriate citations to statutory authority. T.C.A. 40-28-104.

1100-01-01-.14 Revocation of Parole is being changed to clarify the process of appointing an attorney to ensure that the considerations and process are consistent in both preliminary hearings and final revocation hearings. It is also being changed to reflect that the Board no longer oversees Probation/Parole officers or handles supervision of offenders. It is also being edited under subsection (6) (o) to be clearer in meaning. T.C.A. 40-28-104, 40-28-105, 40-28-106, 40-28-118, 40-28-121through 40-28-123 and 40-35-504.

1100-01-01-.15 Confidentiality of Records is being changed to reflect that the Board no longer oversees Probation/Parole officers or handles supervision of offenders. It is also being changed in (1) (a) (7) in the interest of public safety for private citizens. T.C.A. 40-28-104, 40-28-106, 40-28-119, and 40-28-504.

1100-01-01-.16 Duties and Procedures of the Board in Executive Clemency Matters is being changed to reflect that the Board no longer oversees Probation/Parole officers or handles supervision of offenders. T.C.A. 40-27-101, 40-27-102, 40-27-104, 40-28-104, 40-28-106, 40-28-107, 40-28-114 and 40-28-126.

Proposed Rules

of the

Tennessee Board of ~~Probation and~~ Parole

Chapter 1100-01-01

Conduct of ~~Probation and~~ Parole Proceedings

The Administrative History following each rule gives the date on which the rule was filed and its effective date. The Administrative History also shows the date of any amendments or repeals:

Original chapter 1100-01-01 filed December 6, 1979; effective January 20, 1980.

Amendments to rules 1100-01-01-.02 through 1100-01-01-.07, 1100-01-01-.09, 1100-01-01-.11 through 1100-01-01-.13, and 1100-01-01-.15 filed March 11, 1985; effective April 10, 1985.

Amendments to rules 1100-01-01-.06, 1100-01-01-.07, 1100-01-01-.10, 1100-01-01-.11, and 1100-01-01-.13, filed April 18, 1986; effective July 14, 1986.

Repeal of and new chapter 1100-01-01 filed August 31, 1990; effective November 28, 1990.

Repeal of and new chapter 1100-01-01 filed May 5, 2009; effective September 28, 2009.

Repeal of and new chapter 1100-01-01 filed _____; effective _____.

Presented herein are proposed rules of the Tennessee Board of ~~Probation and~~ Parole submitted pursuant to T.C.A. Chapter 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Board of ~~Probation and~~ Parole to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rule is published. Such petition to be effective must be filed with the Board of ~~Probation and~~ Parole, in Room 1300 of the James Robertson Parkway Towers located at 404 James Robertson Parkway, Nashville, TN 37243 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: ~~Columba A. McHale~~Rob Clark, General Counsel, Board of ~~Probation and~~ Parole, Suite 1300, James Robertson Parkway Towers, 404 James Robertson Parkway, Nashville, TN 37243, telephone 615.741.~~1673~~1150.

Chapter 1100-01-01 is repealed in its entirety and substituting in its place the following new rules; The text of the proposed rules are as follows:

~~January 2009 (Revised)~~

New Rules

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1100-01-01-.01	Short Title	1100-01-01-.10	Psychological Evaluations
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1100-01-01-.06	Parole Hearings	1100-01-01-.15	Confidentiality of ~~Probation,~~ Parole and Clemency Records; Confidentiality of Employee Personnel Records
1100-01-01-.07	Board Criteria for Granting or Denying Parole	1100-01-01-.16	Duties and Procedures of Board in Executive Clemency
1100-01-01-.08	The Parole Hearing Process		
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1100-01-01-.01— Short Title.

(1) These rules shall be known and may be cited as the "Rules and Regulations of the Tennessee Board of ~~Probation and~~ Parole."

Authority: T.C.A. § 40-28-104. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.02— Statements of Intent.

(1) It was the intent of the General Assembly in creating the Tennessee Board of ~~Probation and~~ Parole that it be autonomous and in all respects functionally and administratively separate from any other state agency.

(2) Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right, and that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.

(3) Although eligibility for parole is set by statute, whether an inmate is actually released on parole is discretionary with the Board.

(4) To avoid even the appearance of impropriety, all decisions of the Board regarding policy, procedures, and rules shall be determined by a majority vote of the members of the Board. Votes taken shall be public.

~~(5) Regarding probation, the Board recognizes that trial judges have jurisdiction over individuals that are placed on probation. However, Probation/Parole Officers shall supervise probationers in~~

~~accordance with the supervision policies of the Board of Probation and Parole, as well as the conditions of probation established by the trial Judge.~~

Authority: T.C.A. §§40-28-101, 40-28-103 through 40-28-105, 40-28-115, 40-28-116, 40-28-117, 40-28-118, 40-35-~~303, 40-35-~~501, 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.03 —Definitions.

As used in these rules, unless the context otherwise requires:

(1) "Board" means the Tennessee Board of ~~Probation and~~ Parole or a member thereof.

(2) "Chair" means the Board member appointed by the Governor for a two (2) year term to direct the operations of the Board and to fulfill the functions established by law for such position.

(3) "Executive Director" means the person appointed by the Board to serve as chief administrative officer of the agency.

(4) "Director" means the Director of Probation and Parole ~~Field Services~~ employed by the ~~Board~~Tennessee Department of Correction (TDOC) to perform the duties established by law for such position.

(5) "District Director" means ~~an~~a TDOC employee responsible for management of one of several districts within the ~~Division of Field Services~~Department.

(6) "Hearing Officer" means an employee appointed by the Chair to conduct parole hearings.

(7) "Probation and Parole Officer" means ~~an~~a TDOC employee who supervises and investigates the conduct, behavior, and progress of offenders assigned to such person.

(8) "Declaration of Delinquency" means a declaration made by the Director of Probation and Parole ~~Field Services,~~or designee which prevents an offender's sentence from continuing to expire when such offender is alleged to be in violation of the conditions of his or her parole.

(9) "Detainer" means a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(10) "Executive Clemency" means broadly, an act of leniency or an instance of mercy, which may be exercised by the Governor in all criminal cases after conviction, except in cases of impeachment. Included within the Governor's clemency powers are:

(a) "Commutation" means a discretionary act of the Governor, which reduces a prisoner's sentence from a greater to a lesser degree with the extent of such reduction being totally within the discretion of the Governor.

(b) "Conditional Pardon" means a pardon granted upon such conditions and with such restrictions and limitations as the Governor deems proper.

"(c) "Exoneration" means the discretionary act of the Governor of abolishing a conviction and restoring all rights of a person based upon innocence in the case at issue under T.C.A. §40-27-109.

(d) "Pardon" means a discretionary act of the Governor which forgives the defendant or extinguishes his crime thereby granting such defendant full relief from all or any portion of his or her sentence remaining at the time of pardon.

"(e) "Reprieve" or "Respite" means a discretionary act of the Governor which withholds a sentence for an interval of time or a sentence of death for a stated specific period of time, thus having the effect of suspending the execution of the sentence for the duration of the reprieve or respite.

(11) "Inmate" means a felony offender who is in the custody of the Tennessee Department of Correction, a jail or workhouse, or is serving a Tennessee ~~felony~~sentence in another jurisdiction.

(12) "Mandatory Parole" means a parole, which the Board is required to grant to certain inmates who have never been paroled or granted parole of any type prior to the expiration of their sentence. All sex offenders must meet the requirements of T.C.A. §40-28-116 before being released on mandatory parole.

~~(Rule 1100-01-01-.03, continued)~~

13) "Offender" means an inmate who has been placed on parole~~, or a convicted felon who has been placed on probation~~.

(14) "Parole" means the release of an inmate to the community by the Board prior to the expiration of his or her term, subject to conditions imposed by the Board and subject to ~~its~~TDOC supervision; or where a court or other authority has issued a warrant against the offender, and the Board, in its discretion, releases him or her to answer the warrant of such court or authority.

(15) "Parole Hearing" means the process by which a decision is made to grant, deny, revoke, or rescind parole. Such hearing may or may not be in person. This determination is made subject to the classification of offense for which the inmate stands convicted.

(16) "Pre-Parole Rescission" means the procedure by which the Board may terminate an inmate's grant of parole, before the inmate is actually released on parole, due to conduct, violations or omissions committed by such inmate prior to his or her release, or pertinent information that was not available at the time of the hearing.

(17) "Parole Revocation" means the formal procedure by which the Board may terminate or revoke an offender's release on parole for conduct or omissions which violate the conditions of such offender's parole after his or her release.

(18) "Post-Parole Rescission Hearing" means the procedure by which the Board may terminate an offender's grant of parole, after such offender is actually released on parole, due to conduct, violations or omissions committed by such offender, significant information fraudulently given or withheld by the offender or on behalf of the offender, or other information the Board was unaware of at the time of the parole grant.

(19) "Preliminary Hearing" means the initial hearing conducted by a Hearings Officer, to determine whether probable cause exists to believe an offender has violated the conditions of his or her parole in an important respect.

~~(20) "Probation" means the release by a court, determinate release, or release from special alternative incarceration, of a person found guilty of a crime, upon verdict or plea, without~~

~~imprisonment, subject to conditions imposed by the court and subject to the supervision of the Board of Probation and Parole.~~

~~(21) "Probation Revocation" means the formal procedure, by which a Judge may terminate or revoke an offender's probation for conduct or omissions which violate the conditions of such offender's probation.~~

Authority: T.C.A. §§40-27-101, 40-27-102, 40-27-104, 40-27-109, 40-28-102 through 40-28-105, 40-28-~~108, 40-28-111, 40-28-~~117, 40-28-121 and 40-28-122. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.04 ~~—~~Administration of the Board of ~~Probation and~~ Parole.

(1) Board Structure.

(a) Composition of the Board shall be as provided by law. The appointment of members of the Board, the selection of its Chair, and the quorum requirements shall be those specified by law. (T.C.A. Title 40, Chapter 28).

(b) These regulations are promulgated under the authority of T.C.A. §40-28-101 et seq. and in accordance with the Uniform Administrative Procedures Act. (T.C.A. Title 4, Chapter 5).

~~(Rule 1100-01-01-.04, continued)~~

(c) The Board shall keep or cause to be kept appropriate records of all of its official actions. Such records shall be made accessible to the public and interested parties in accordance with law and these rules and regulations.

(2) Administrative Structure.

(a) The administrative structure of the Tennessee Board of ~~Probation and~~ Parole is as follows:

1. The Executive Director of the Board is the chief administrative officer of the Board, who shall be appointed by the Board.

~~2. There shall be a division of Probation and Parole Field Services. This division is headed by the Director of Probation and Parole Field Services, who shall be appointed by the Board.~~

~~3~~2. There shall be other divisions of the Board as established by the Executive Director and the Board. These divisions shall be represented on the organizational chart maintained and updated by the Executive Director.

Authority: T.C.A. §§40-28-101, 40-28-103 through 40-28-~~108,~~107 and 40-28-119. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.05 ~~—~~General Board Policy.

(1) Board Administrative Meetings.

(a) Administrative meetings of the Board are open to the public and to the news media.

(b) Although administrative meetings and hearings are open to the public, the Board reserves the right to make such internal adjustments, rules, and regulations as are necessary to insure that the proceedings remain orderly at all times.

(c) Notices of the Board's administrative meetings will be provided in accordance with the Open Meetings Act.

(2) Information concerning the Board.

(a) The Board shall maintain and will disseminate written information concerning its organization, functions, policies, procedures, rules, regulations, parole criteria, and/or supervision guidelines to any party requesting such information.

(3) ~~All~~ Public Records Requests

(a) Personnel of the Tennessee Board of Parole shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of these Rules shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Tennessee Board of Parole shall be protected as provided by current law. Information generated or held by the Board of Parole that is deemed confidential pursuant to Statute and/or Board of Parole Rules and Policies shall not be released to the public.

(b) Public record requests shall be ~~responded to~~ made to the Public Records Request Coordinator ("PRRC") in order to ensure public record requests are routed to the Records Custodian and fulfilled in a timely manner.

(c) Requests for inspection only are not required to be made in writing. Requests for copies shall be made in writing via email or mail.

(d) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license or alternate acceptable form of identification is required as a condition to inspect or receive copies of public records, unless the requestor is a former offender requesting his/her official record or a victim of a crime requesting the record of the offender who committed the crime against him or her.

(e) The PRRC shall cause a record to be kept of all public record requests, and the date the request was received by the agency. The PRRC shall acknowledge receipt of the request within seven (7) business days and determine the appropriate action(s) to take.

(f) The PRRC shall forward appropriate requests for public records to the records custodian(s) for the requested records.

1. The Records Custodian shall make the requested public records available to the PRRC in accordance with ~~the Tennessee Public Records Act and~~ T.C.A. §~~40-28-119. The Board may charge a reasonable~~ 10-7-503 and agency policy as practicable. If additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records, or for other similar reasons, the records custodian shall promptly communicate this to the PRRC who shall notify the records requestor within seven (7) business days of receipt of the request.

2. If a record contains confidential information or information that is not open to public inspection, the Records Custodian shall prepare a redacted copy prior to providing the record to the PRRC. If questions arise concerning redaction, the records custodian shall coordinate with the General Counsel and other appropriate parties regarding review and redaction of records.

(g) Fees and charges for copies of public records shall be charged in accordance with Tennessee Board of Parole policies. Cost for copies shall be $.15 per page. Cost for a CD of a parole hearing shall be $10.00. No charges will be assessed for copies and duplicates unless the total fee for ~~processing requests for public records~~the request exceeds $5.00. Costs for labor shall be assessed where time to prepare records exceeds one (1) hour.

Authority: T.C.A. §§ 10-7-101 et. seq., 10-7-503, 40-28-104, 40-28-105, 40-28-119, and 40-28-502. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.06 Parole Hearings.

(1) The Board will conduct hearings concerning matters of parole release and parole violations. The times, locations, and dockets of such hearings will be announced to the appropriate institutional and parole staff, the inmates or offenders, Judges, Sheriffs, and District Attorney Generals of the county in which the person was convicted, and any other interested parties who have requested to be notified.

~~(Rule 1100-01-01-.06, continued)~~

(2) At least thirty (30) days prior to a scheduled parole hearing and three (3) days prior to a parole revocation hearing, the Board shall send notice of the date and place of the hearing to the following individuals:

(a) The trial Judge for the Court in which the conviction occurred, or the trial Judge's successor;

(b) The District Attorney General in the county in which the crime was prosecuted;

(c) The Sheriff of the county in which the crime was committed; and

(d) The victim or the victim's representative, who has requested notification of the date and place of the scheduled hearing and/or notice of the Board's final decision. However, at any time, the victim or victim's representative may withdraw the request for notice by sending the Board a written statement that the request for notice is withdrawn.

(3) A victim of a crime or a victim's representative may submit a victim impact statement.

(4) No later than thirty (30) days after a parole hearing decision has been finalized, the Board shall send notice of its decision to those required to receive notice under subsection (2), together with notice that any victim whom the Board failed to notify as required in subsection (2) has the opportunity to have a written impact statement considered by the Board.

(5) Subject to applicable provisions of law, it is the sole duty of the Board to determine which inmates serving a sentence in state prisons, county workhouses, and/or jails may be released on parole, when they may be released, and under what conditions.

(6) In granting parole, the Board may impose any conditions and limitations that the Board deems necessary, including consent by the offender to submit to search _by ~~probation and parole~~TDOC staff or law enforcement.

Authority: T.C.A. §§40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-118, 40-28-119, 40-35-501, 40-28-503, and 40-28-505. Administrative History: Original rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.07— Board Criteria for Granting or Denying Parole.

(1) Before granting or denying parole, the Board may apply the following factors to each eligible inmate to assist in determining whether such inmate will live and remain at liberty without violating the law or the conditions of his or her parole:

(a)——The nature of the crime and its severity;

(b)——The inmate's previous criminal record, if any;

(c)——The inmate's institutional record;

(d) The views of the appropriate trial Judge and the District Attorney General, who prosecuted the case;

(e)——The inmate's circumstances if returned to the community;

(f)——Any mitigating or aggravating circumstances surrounding the offense;

(g) The views of the community, victims of the crime or their family, institutional staff, probation and parole officers, or other interested parties;

(h) The inmate's training, including vocational and educational achievements;

(i) The inmate's employment history, his or her occupational skills, including any military experience, and the stability of his or her past employment;

(j)——The inmate's past use of narcotics, or past habitual and excessive use of alcohol;

~~(Rule 1100-01-01-.07, continued)~~

(k) The inmate's behavior and attitude during any previous experience on probation or parole and the recentness of such experience;

(l) An objective advisory parole predication guideline system to adequately assess the risk an inmate poses to society and his or her potential for parole success;

(m)——Any other factors required by law to be considered or the Board determines to be relevant.

(2) In applying the above factors to a particular inmate, the Board may consider the following sources of information:

(a) Reports prepared by institutional staff relative to the inmate's social history and institutional record, including any recommendations the institutional staff may wish to make;

(b) All relevant Department of Correction or other prison, jail, or workhouse reports;

(c) Observations concerning the suitability of releasing the inmate on parole from court officials, law enforcement officials, and other interested community members;

(d) Reports or recommendations resulting from any physical, psychological, or psychiatric examination or evaluation of the inmate;

(e) Any relevant information submitted by the inmate, his or her attorney, representatives on his or her behalf, or other interested parties;

(f) The parole plan, which the inmate has submitted; and

(g) Any other relevant information concerning the inmate.

(3) The Board shall consider written impact statements or other information submitted by the victim or the victim's family.

(4) After applying the various factors for consideration to the individual inmate, the Board shall deny the inmate's release on parole if it determines that:

(a) There is a substantial indication that the inmate will not conform to the conditions of his or her parole;

(b) Release from custody at this time would depreciate the seriousness of the crime of which the person stands convicted or promote disrespect for the law;

(c) Release at this time would have a substantially adverse effect on institutional discipline; or

(d) The person's continued correctional treatment, medical care, or vocational or other training in the institution, will substantially enhance the person's capacity to lead a law-abiding life when given release at a later time.

(5) The Board may revise or modify its parole criteria and factors for consideration, as it deems appropriate.

Authority: T.C.A. ~~§§. §§~~40-28-104, 40-28-105, 40-28-106~~, 40-28-108~~, 40-28-114, 40-28-116, 40-28-118, 40-28-504, and 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.08 The Parole Hearing Process.

(1) Parole Eligibility.

(a) Although the decision to release an inmate on parole is discretionary with the Board, parole eligibility is, by law, based upon the completion of a statutorily specified portion of a sentence, less any applicable credits.

(b) The Department of Correction shall notify the Board of an inmate's parole eligibility date.

(c) The Board's staff shall then compile and distribute dockets or lists of the cases to be heard by the Board.

(d) Subject to later alteration, the Board's schedule of dates and locations of hearings shall be available to those requesting it prior to the hearing.

(e) Inmates classified as close custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction, as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as close custody.

(f) This de-certification of inmates classified as close custody shall continue for the duration of the classification and for a period of one (1) year thereafter.

(g) Inmates classified as maximum custody at the time they would otherwise be eligible for parole, shall not be certified by the Department of Correction as eligible for a parole grant hearing, other than an initial grant hearing if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody.

(h) This de-certification of inmates classified as maximum custody shall continue for the duration of the classification and for a period of two (2) years thereafter.

(2) The Parole Hearing Process.

(a) The Board is empowered to employ Hearing Officers to review inmates for any matter concerning a parole. The Hearing Officer's recommendations are advisory only and the Board shall accept, modify, or reject any recommendation made by a Hearing Officer.

(b) If the Board determines that it does not have necessary reports or sufficient information, upon which to base an objective decision in a particular case, it may continue such hearing to a later date. The Board may also continue a hearing to await the disposition of untried indictments, disciplinary proceedings, or to investigate the status of an outstanding detainer. Such continued hearings will subsequently be processed as scheduled, unless new commitments or the loss of good and honor time credits, alters the inmate's parole eligibility dates.

(c) Any eligible inmate may request that his or her scheduled parole grant hearing be deferred until a later specific month or year by signing a waiver to that effect, witnessed by correction or probation and parole personnel. The Board or a designated Hearing Officer may accept or reject the waiver and agree to defer the case or proceed to conduct the hearing. An inmate is to sign a waiver asking that his or her parole hearing be continued until a later date.

(3) Findings and Notice of Decision.

(a) The Board shall notify the inmate, in written form, of its final decision and reasons for the decision. Upon receipt of notice of the decision, the inmate shall sign and date a copy of the decision notification.

(b) (As soon as practicable after the Board's action, it shall cause to be forwarded to the appropriate standing committee of the General Assembly, a written list of the names of all inmates released on parole.

(4) Appellate Procedure.

(a) An inmate whose parole has been revoked, rescinded, or denied may request an appellate review by the Board. Requests for an appellate review must be received by the Board within forty-five (45) days from the date the inmate signed

the decision notification indicating that he or she has received notice of the decision.

(b) If the request for an appeal is not received within forty-five (45) days from the date the inmate signed the decision notification, it will be denied.

(c) The request will be screened by Board Members, or their designee, to decide if it will be forwarded to the Board Members for their review.

(d) Reviews by the Board will be conducted for the following reasons:

1. If there is significant new evidence that was not available at the time of the hearing;

2. If there are allegations of misconduct by the hearing official that are substantiated by the record; or

3. If there were significant procedural errors by the hearing official.

(e) All requests that will be sent to the Board Members for review must be based on one or more of the above stated reasons.

(f) Requests based on the availability of new evidence or information must be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors must clearly indicate the specific misconduct or procedural error(s).

(g) If a case is set for review, it will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. An appearance appeal hearing may be conducted if there were significant errors on the part of the hearing official or if misconduct on the part of the hearing official occurred in the initial hearing, and another hearing is necessary in order to correct the misconduct or significant errors from the first hearing.

(h) If the appeal reviewer believes that a review by the Board is warranted, the file shall be forwarded to Board Members not voting on the original case and not a party to the original decision. If there are not sufficient non-voting members to finalize the appeal, the appeal document shall be circulated randomly to Board Members until a final decision is reached.

(i) A decision to hold an appeal hearing requires three concurring votes of the Board Members. The Board may also vote to grant the appeal without holding a new hearing if the significant new information is sufficient. This decision also requires the concurrence of three (3) Board Members.

(5) Parole Revocation/Rescission Review Pursuant to TCA § 40-28-122(g)

(a) This type of hearing may be requested by an offender if that offender's parole has been revoked or rescinded by the Board of Parole based solely upon the filing of new criminal charges, and those charges are later:

1. Dismissed or retired on the merits;

2. A no true bill is returned by a grand jury;

3. A verdict of not guilty is returned by a judge or jury; or

4. The offender was arrested and released without being charged.

(b) A written or emailed notice of the foregoing must be submitted to the Executive Director of the Board by:

1. The district attorney general (or designee thereof) from the judicial district in which the charges were brought;

2. The judge in the court where the charges were brought;

3. An Assistant Commissioner from the Department of Correction;

4. The offender's attorney, provided that the notification is also signed by one of the first three officials listed herein; or

5. The offender, provided that the notification is also signed by one of the first three officials listed herein.

(c) This written or emailed notice must include documentation of the alleged event and will be verified within ten (10) business days.

(d) If verified and the offender is eligible pursuant to statute, the Board or the Board's designee will conduct a hearing on the record to determine if the criteria have been met, as outlined in T.C.A. § 40-28-122(g), after which the Board may vote, based on the entirety of the record, to release and reinstate parole in accordance with applicable law. This hearing shall be scheduled for the next available docket, and shall be conducted no later than thirty-five (35) days from verification of eligibility.

(e) If released and reinstated, the Board shall notify TDOC so that any sentence credits that may have been lost while the offender was incarcerated shall also be reinstated.

Authority: T.C.A. §§40-28-104 through 40-28-107, 40-28-115, 40-28-116, 40-28-119, 40-28-122, 40-35-501, and 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.09 Release on Parole Date.

(1) Grant of Parole.

(a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the inmate, by a Board designee, and the inmate has voluntarily signed the certificate.

~~(Rule 1100-01-01-.09, continued)~~

(b) If the Board Members have voted to establish a release date, release on that date shall be conditioned upon the continued good conduct of the inmate while remaining incarcerated prior to the effective date, and the approval of a satisfactory release plan.

(c) If the Board has specified in their decision, that the inmate is to complete a program as a pre-parole condition prior to their effective date, the inmate must complete the program prior to that effective date. If the inmate has not

completed the program prior to the effective date, a rescission hearing may be scheduled.

(d) Upon receipt of significant new information, the Board may, on its own motion, reconsider any parole grant case prior to the release of the inmate and may reopen and advance or delay a parole date.

Authority: T.C.A. §§ 40-28-104 and 40-28-116. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.10 Psychological Evaluations.

(1) The Board may order a psychological evaluation of any inmate, where they believe it appropriate.

(2) Psychological evaluations for sex offenders must meet the standards cited in T.C.A. §40-28-116 or the standard that was in effect at the time such inmate committed the sex offense for which they are currently serving their sentence. Such certification is required before any inmate convicted of a sex crime is released on parole.

(3) Such evaluations are not required prior to a sex offender's parole hearing but only prior to a sex offender's release on parole.

(4) Prisoners who have been convicted of a sex offense shall not be released on mandatory parole unless they have been evaluated and meet the statutory requirement described in T.C.A. §40-28-116.

Authority: T.C.A. §§40-28-104, 40-28-106, 40-28-116, 40-28-117, and 40-35-503. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed

1100-01-01-.11 Detainers.

(1) A Detainer is a warrant or hold placed against an inmate by another jurisdiction (called the "detaining authority") notifying the holding facility of the intention to take custody of the individual when he or she is released.

(2) The presence of a detainer shall not, in and of itself, constitute a valid reason for the denial of parole.

(3) Parole to Detainers.

(a) As used in this rule, unless the context otherwise requires, 'parole to a detainer' means the release of the inmate to the physical custody of the authority who has lodged the detainer.

(b) Where the detainer is not lifted, the Board may grant parole to such detainer within their discretion.

(c) The Board will cooperate in establishing and maintaining arrangements for concurrent supervision with other jurisdictions, where such arrangements are feasible and where release on parole appears, to the Board, to be justified.

~~(Rule 1100-01-01-.11, continued)~~

(d) If the Board has granted parole to "detainer only" and the jurisdiction placing the detainer, lifts it or fails to take custody of the inmate, a rescission hearing will be scheduled.

Authority: T.C.A. §§40-28-104 and 40-28-401. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.12 —Rescission of Parole.

(1) Pre-parole Rescission.

(a) If an inmate has been granted parole and has subsequently been charged with institutional misconduct, escape, or has been served with a warrant or received a new felony sentence or had the certification of parole eligibility withdrawn by the Department of Correction or has other changes in circumstances sufficient to become a matter of record, the Board shall be promptly notified and advised of such new circumstances.

(b) No inmate about whom notification has been made pursuant to subparagraph (a) of this subsection shall be released on parole until such time as the institution has been properly informed that no change has been made in the Board's order to parole.

(c) Upon receiving notification as required by subparagraph (a) of this subsection, the Board may schedule a parole rescission hearing or notify the institution that the grant of parole remains.

(2) The Pre-Parole Rescission Procedure.

(a) The rescission hearing may be scheduled, if possible, for the next docket of parole hearings at the institution where the inmate is being held.

(b) The inmate shall be given adequate notice of the reason(s) such rescission hearing is being conducted. Such notice shall be given at least three (3) days prior to the scheduled date of the rescission hearing. The reason(s) for the rescission hearing shall be stated in the notice, with the exception of information that is considered confidential by the Board.

(c) A rescission hearing may be held in order to determine if the inmate's misconduct or other change in circumstances is sufficient to warrant rescission of such inmate's parole grant.

(d) The inmate may appear at his or her rescission hearing and may present documentary evidence and witnesses in his or her behalf at the rescission hearing.

(e) The inmate's presence is not necessary at the rescission hearing if:

1. The institutional misconduct has been established by the institution's disciplinary committee by a finding that the inmate has violated the rules of his or her confinement~~;~~, or

2. If the misconduct has resulted in a conviction in a court of law.

(f) The Board may delay the parole grant for up to one hundred and twenty (120) days if, in its opinion, it has insufficient information before it to reach an informed and fair decision at the rescission hearing. Awaiting the disposition of institution discipline committees, new charges or indictments, or investigating new

detainers shall also be sufficient grounds to continue a rescission hearing under this subparagraph.

(g) If the result of the process is that the inmate's grant of parole is rescinded, he or she shall be given written notice evidencing the reasons for the rescission of the parole grant.

(h) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

~~(Rule 1100-01-01-.12, continued)~~

(3) Post-parole Grant Rescission Procedure.

(a) If, after a parole has become effective and the inmate is released on parole, evidence comes to the attention of the Board that significant information was fraudulently given or withheld by the inmate, or on behalf of the inmate, or that the inmate violated the law while on any furlough or other release program prior to being released on parole and such information was not known by the Board, or that the parolee has been arrested, indicted or convicted for an offense that was committed prior to parole, or that the parolee has an unexpired prison term of which the Board was unaware at the time of the hearing, or that a calculation of the parolee's sentence structure would render him or her ineligible for parole, the Director may issue a warrant for the retaking of such parolee.

(b) A grant of parole shall not be rescinded except upon the concurrence of two (2) Board Members.

(c) Upon the execution of the warrant, the offender shall be notified of the reasons for the post parole grant rescission hearing. The provisions of Rule 1100-01-01-.14 with regard to notice and hearings procedures shall be followed.

(d) At such rescission hearing, the Board may declare that the grant of parole is void and the inmate shall thereupon resume his or her sentence in custody, or the Board may declare that grant of parole void, but decide to re-parole on both the old and new cases if eligibility has been certified by the Department of Correction, or the Board may decide to leave the subject on parole.

(4) Appeal Procedure.

(a) An inmate whose parole has been rescinded may request an appellate review by the Board. Such review shall be in accordance with the procedure outlined in rule 1100-01-01-.08 (4).

Authority: T.C.A. §§40-28-104 and 40-28-105. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.13 Discharge of Parole.

(1) When the Board is satisfied that a parolee has complied with the conditions of his or her parole in a satisfactory manner, the Board shall cause to be issued to such parolee a certificate of final discharge. Final discharge from parole will be granted only after a

parolee has reached the expiration date of his or her sentence(s). This is in no way to be construed as permitting a discharge from parole for parolees with a life sentence.

Authority: T.C.A. §§ 40-28-104~~ and 40-28-125.~~. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.14 —Revocation of Parole.

(1) Parole Revocation

(a) If a Probation/Parole Officer having charge of an offender, has reasonable cause to believe that the offender has violated one or more of the conditions of parole in an important respect, such officer shall present such evidence to the Director or designee.

(b) This report shall be in written form, and shall contain a listing of the violations alleged and the facts and circumstances surrounding each violation.

~~(Rule 1100-01-01-.14, continued)~~

(c) Upon receipt of a Probation/Parole Officer's report alleging violation of parole, the Director or designee, may issue a warrant for the retaking of the offender and his or her return to a correctional institution in the State of Tennessee, if the Director or designee determines parole has been violated in an important respect.

(d) Any officer authorized to serve criminal process, or any peace officer to whom such warrant is delivered, shall execute the warrant by taking the offender into custody.

(e) In those cases where the offender is confined in another state pending new criminal charges, or is serving a sentence in another state, the warrant may be placed there as a detainer. If it becomes apparent that the Board cannot obtain physical custody of the offender detained in another state, the Director or designee shall withdraw the warrant and issue a letter of notification. The letter of notification shall consist of a letter sent to the custodian of the offender being held in another jurisdiction and shall inform such custodian that the named individual is an alleged parole violator in the State of Tennessee.

(f) Such notification shall request that the out-of-state custodian inform the Tennessee Director or designee of the release of the named offender at least ninety (90) days prior to such release from the out-of-state or foreign jurisdiction.

(g) Upon receipt of notification by the custodian that an offender will be released, the Director or designee shall reissue the warrant so that the offender may be returned to Tennessee by execution of such warrant unless parole has expired.

(h) When an offender is returned to the custody of Tennessee authorities from his or her confinement by an out-of-state custodian, such offender shall be afforded prompt parole revocation proceedings.

(i) Nothing in this rule shall be construed to prevent the Director or designee from issuing a letter of notification to the custodian of the offender in the first instance in lieu of placing a warrant as a detainer.

(2) Preliminary Hearing.

(a) Upon execution of a warrant by the Director, the offender shall be given adequate notice of the preliminary hearing or revocation hearing. If a revocation hearing is held within fourteen (14) days after the service of the warrant, a preliminary hearing is not required.

(b) The notice shall state the time and place of the hearing and shall inform the offender that at the hearing he or she will be given the opportunity to present witnesses and documentary evidence in his or her behalf, shall be allowed to cross-examine any adverse witnesses in attendance, and that he or she has a limited right to request legal representation.

(c) Unless waived in writing or a revocation hearing is held within fourteen (14) days of service of the warrant, the offender shall be afforded a preliminary hearing.

(d) The preliminary hearing shall be conducted as scheduled unless the offender voluntarily waives such hearing in writing. For such a waiver to be effective, it must contain the following:

1. A clear statement that the offender is entitled to a preliminary parole revocation hearing; and

2. A clear statement that the offender has the right to present documentary evidence, as well as individual testimony which may give relevant information to the Hearing Officer, and a limited right to request legal representation.

~~(Rule 1100-01-01.14, continued)~~

(e) If the offender expresses his or her desire to waive such hearing, a Probation/Parole Officer shall explain the contents of the waiver to the offender and shall not accept such waiver unless he or she is reasonably certain that the offender fully understands the contents and consequences of such a waiver and that the offender knowingly and voluntarily still desires to waive his or her preliminary hearing.

~~(f)~~(f) A request to appoint an attorney for an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If a preliminary hearing is held and the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board~~,~~ that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

~~(g)~~ 2. The offender may request that he or she be appointed counsel to represent him or her. If the offender has made such a request, the Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in (g) 1-3.

(g) The General Counsel may appoint attorneys in accordance with applicable case law or in the following situations:

1. The offender has made a timely and colorable claim that he has not committed the alleged violation of the conditions upon which he is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. The offender is incapable of speaking effectively for himself or herself.

(h) In every case in which a request for counsel at a preliminary hearing is denied, the grounds for such refusal shall be stated succinctly, in writing, by the Hearing Officer.

(i) In every case in which a request for counsel at a preliminary hearing is not made, the Hearing Officer or a Parole Officer shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(j) Nothing in this rule shall be construed to prevent the waiver of the right to a preliminary hearing and the decision not to request counsel at the preliminary hearing from appearing on the same document.

(k) At the preliminary hearing, the offender shall have the right to:

1. Appear at the hearing and speak in his or her own behalf;

2. Produce documents, letters, and individuals relevant to the violation(s) alleged;

3. Confront and cross-examine persons who have given adverse information upon which his or her parole revocation is to be based, unless the Hearing Officer finds good cause exists to disallow such cross-examination and confrontation; and

4. Be represented by retained counsel or an attorney appointed under the conditions noted above.

(l) The Hearing Officer shall conduct the hearing informally, including the presentation of the documents or evidence in support of parole violation and the offender's responses to such evidence. Based on the information presented at the hearing, such Officer shall determine whether probable cause exists to believe that the offender violated the conditions of his or her parole in an important respect.

(m) If the Hearing Officer determines it is necessary or the offender requests that any witnesses be subpoenaed, such Officer shall employ the following procedure:

~~(Rule 1100-01-01.14, continued)~~

1. If the witnesses are requested by the offender, such offender or his or her attorney shall submit a written statement to the Probation and Parole Officer, as well in advance of the scheduled hearing as possible, of the names of the persons requested as well as a brief statement of why their testimony is relevant. The statement requesting witnesses shall be forwarded to the ~~District Director who~~Board of Parole which shall review the request(s) and issue subpoenas for necessary witnesses.

2. If the witnesses are requested by the state, the person representing the state shall comply with the same procedure set out in subpart (1) above, but the request shall be sent directly to the ~~District Director.~~Board of Parole.

3. Failure to comply with this procedure by the parties shall be sufficient grounds for denial of a subpoena request. If the offender is not represented by an attorney the subpoenas may be served by a Probation/Parole Officer or sent by certified mail.

(n) At the preliminary hearing, the Hearing Officer shall select one of the following alternative decisions:

1. No probable cause found, and the offender shall be returned to supervision and the violation warrant withdrawn; or

2. Probable cause found and the offender shall remain in custody under the violation warrant to await a final parole revocation hearing before the Board.

(3) Declaration of Delinquency.

(a) A declaration of delinquency may be issued by the Director of Probation and Parole~~, Field Services or designee,~~ in revocation proceedings to suspend such credit toward the service of the offender's sentence. Such declaration shall be made by the Director or designee in any case when a parole violation warrant is issued, and the parolee is not in custody.

(b) Except when an offender is declared to be in a delinquent status, the time he or she is on parole is credited toward the service of his or her sentence unless it is taken by the Board after a revocation of parole.

(c) If delinquency is declared, the offender stops earning credit for the service of his or her sentence from the date of declaration, until the parole violation warrant is served and the offender is housed in a correctional facility in Tennessee. Offenders taken into custody in another state will remain in delinquent status from the declaration of delinquency until they are returned to a Tennessee correctional facility or until delinquency is removed by the Board.

(d) During the revocation process, the Board may consider an alleged violation and determine either that parole should not be revoked or that mitigating or compelling circumstances exist for the violation. The Board may then "take" or "grant" the delinquent time. Taking delinquent time requires that the offender lose credit toward service of sentence. The Board may take all of the delinquent time or some lesser amount of time, which is set by the Board. Granting the delinquent time restores all of the offender's credit toward service of sentence as though delinquency had never been declared.

(4) Notice of Final Parole Revocation Hearing.

(a) Prior to the revocation hearing, the offender shall be notified in writing of the following:

1. The date, time, and location of the hearing;

2. That the offender has the right to appear in person and present such evidence as he or she desires;

3. That he or she has the right to confront and cross-examine any adverse witnesses, unless good cause can be shown for refusing confrontation

and cross-examination, such as a significant potential for harm if identities are revealed; and

4. That the offender has a limited right to request that counsel be appointed to represent him or her at the final revocation hearing.

-(5) Continuance of Final Revocation Hearing.

(a) Following a finding of probable cause at the preliminary hearing, the Board shall schedule a final revocation hearing as promptly as possible to consider the alleged violation(s) of parole.

(b) On its own motion, the Board may continue the final revocation hearing in order to secure more or necessary evidence or witnesses at the hearing, or to secure counsel to represent the offender.

(6) Final Revocation Hearing.

(a) At the final revocation hearing, the offender shall have the right to appear and be heard in person and to present witnesses and documentary evidence.

(b) The offender shall have the right to confront and cross-examine adverse witnesses, unless the Board specifically finds good cause for not allowing such confrontation and cross-examination.

~~(c)~~(c) A request to appoint an attorney to an offender may be forwarded to the General Counsel of the Board of Parole under two circumstances:

1. If at a final revocation hearing, the Hearing Officer is of the belief that the inmate is incapable of speaking effectively for himself or herself, the Hearing Officer shall continue the hearing and notify the General Counsel for the Board, that an attorney appointment is recommended. Upon receiving this recommendation, an attorney may or may not be appointed.

2. The offender may request that he or she be appointed counsel to represent him or her. -If the offender has made such a request, the ~~Board,~~Hearing Officer shall determine whether the request shall be forwarded to the General Counsel under the criteria the General Counsel considers in ~~its discretion, may provide counsel based on~~(d) 1-3.

(d) The General Counsel may appoint attorneys in accordance with applicable case law or in the following ~~considerations:~~ situations:

1. ~~That the~~The offender has made a timely and colorable claim that he ~~or she~~ has not committed the alleged violation of the conditions upon which he ~~or she~~ is at liberty; or

2. Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

3. ~~In doubtful cases, the Board will consider whether the~~The offender ~~appears to be capable~~is incapable of speaking effectively for himself or herself.

(~~d~~e) In every case in which a request for counsel at a final revocation hearing is refused, the grounds for such refusal shall be stated succinctly in the record, in writing.

(~~e~~f) In every case in which a request for counsel at a final revocation hearing is not made, the Board shall have the offender sign a statement that he or she has been fully informed of his or her ability to request that he or she be appointed counsel to represent him or her and that he or she has decided not to seek appointed representation.

(~~f~~g) At the final revocation hearing, the Board will initially determine whether the alleged violation of parole is supported by a preponderance of the evidence. In all cases, the burden shall be on the State to establish that a violation occurred.

(~~g~~h) If the Board determines that a parole violation occurred, or if the offender admits to a violation, the Board shall next consider whether such grant of parole should be revoked for the violation.

~~(Rule 1100-01-01.14, continued)~~

(~~h~~i) In all cases, including those situations in which the offender has been convicted of a new offense, the Board shall consider any mitigating factors advanced by the offender, which suggest that the violation of parole does not warrant revocation.

(~~i~~j) All parole revocation hearings shall be conducted in a manner as informal as is consistent with due process and the technical rules of evidence shall not apply to such hearings.

(~~j~~k) All evidence upon which the finding of a parole violation may be based, shall be disclosed to the offender at the revocation hearing unless it has been declared confidential by the Board.

(~~k~~l) Nothing in this subsection shall be construed to prevent the Board from disclosing documentary evidence by reading or summarizing the appropriate document for the offender.

(~~l~~m) If the Board sustains the violation and decides to revoke parole, the offender shall be returned to confinement to serve the remaining portion of his or her sentence or such part as the Board directs. The time an inmate spent on parole shall not be considered as service of the sentence unless the Board determines to grant all or part of such "street time" to the inmate.

(~~m~~n) The Board shall set a review date and record it on a Board Action Sheet.

(~~n~~o) If the Board finds that the offender did not commit the alleged violation or, if he or she did, finds that mitigating factors dictate revocation is not appropriate, the offender shall be allowed to resume ~~the conditions of~~ his or her parole status subject to the conditions approved by the Board.

(7) Felony Committed While on Parole.

(a) If a person is convicted in this state of a felony committed while on parole from a prison, workhouse, or jail in this state, he or she shall serve the remainder of his or her sentence under which parole was granted, or such part of that sentence as the Board may determine before he or she commences serving the sentence fixed for the crime committed while on parole.

(b) If a person on parole from a prison, workhouse, or jail in this state is convicted of a crime under the law of another state or county which, if committed in this state, would be a felony, the Director of Probation and Parole in this state, shall seek to return such offender to this state through the terms of the interstate compact. If

such offender is returned, the Board shall require that he or she serve the portion remaining of his or her maximum term of sentence or such part of that term as the Board may determine.

(c) The Board, at its discretion, may recommend to the Commissioner of Correction, the removal of all or any part thereof, of the good and honor time and incentive time such inmate accrued on the sentence under which he or she was paroled. The final decision relative to whether any or all of such time credits will be removed shall be made by the Commissioner of Correction.

Authority: T.C.A. §§40-28-104, 40-28-105, 40-28-106, 40-28-118, 40-28-~~120~~121 through 40-28-123 and 40-35-504. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Amendment filed April 18, 1986; effective July 14, 1986. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.15 Confidentiality of Records.

(1) Confidential Information.

(a) The following information may be contained in the Board's file and is considered confidential by the Board and will not be released unless listed as an exception under rule 1100-01-01-.15(3):

1. Psychological evaluations provided, however, that such may be released to mental health officials who are treating the offender if a release of information form signed by the offender is presented with the request.

2. Offense Report.

3. Medical Records.

4. Contents of probation and parole staff chronological records, contact notes.

5. Probation/Parole Officers' statements accompanying violation reports

6. Written clemency recommendations to the Governor.

7. Statements in opposition of an offender by victims, families of victims, victims' representatives, families of inmates, private citizens ~~who request confidentiality~~, and public officials who request confidentiality.

8. Victim impact statements.

9. Internal Affairs investigative reports.

10 Any reports or information generated by other agencies.

11. Other information, the release of which the Board specifically finds would be a serious safety risk to the public, staff, parolee or inmate.

(2) Information Available for Release.

(a) The following information may be released:

1. hearing and decision-making policy and procedures;

2. whether an inmate is being considered for parole or clemency;

3. whether parole or clemency has been granted or denied;

4. effective date for parole;

5. statements in support of a parole;

6. clemency applications and supporting documentation;

7. date, time, and location of hearings;

8. parole certificates and determinate release certificates;

9. reasons for the Board decisions listed on the Board Action Sheet;

10. residential and employment records of offenders;

(b) Requests for information from field supervision files shall be directed to the District Director or his or her designee. The District Director or his or her designee will review the records and release information available under rule 1100-01-01-.15(2)(a).

(3) Upon official request, law enforcement, child support officials, or other governmental entities shall be provided information as necessary to assist in their investigations, in their official capacity. Upon verification of the identity of the requesting official the following information may be released:

~~(Rule 1100-01-01.15, continued)~~

(a) offender's aliases;

(b) offender's M.O. (modus operandi or mode of operation);

(c) offender's address;

(d) offender's place of employment;

(e) offender's photographs and fingerprints;

(f) offender's social security number;

(g) offender's telephone number;

(h) offense reports;

(i) whether a ~~Board of Probation and Parole~~ warrant has been issued and whether an offender has been arrested on a ~~Board of Probation and Parole~~ warrant;

(j) violation reports;

(k) information on assets of persons currently or previously on parole who owe court fines.

(4) The Board shall not release employee personal information such as social security numbers, home addresses, or telephone numbers.

Authority: T.C.A. §§40-28-104, 40-28-106, 40-28-119, and 40-28-504. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

1100-01-01-.16 Duties and Procedures of Board in Executive Clemency Matters.

~~January 2009 (Revised)~~

(1) The Board shall, upon the request of the Governor, consider and make nonbinding recommendations concerning all requests for commutations or pardons. Such recommendations shall be made according to the following procedures:

(a) Beginning Steps of Clemency Procedure.

1. Upon receipt of a request from an offender or his or her attorney for executive clemency consideration, the Board shall respond by sending to the individual making the request an executive clemency application with a cover letter explaining the application procedure.

(i) If the Board receives a request for clemency on behalf of an individual by a third party who is not the individual's attorney, the Board shall respond and advise the third party that the person for whom clemency is requested must apply directly to the Board unless that person lacks the competency to apply in his or her own behalf.

(ii) Where a request for clemency is referred to the Board from the Governor's office, the Department of Correction, or any other agency, such request shall be handled in the same manner as if the request had been initially addressed to the Board.

(b) Pardon Requests.

1. An application for a pardon must be accompanied by information and evidence sufficient to enable the Board to determine whether the applicant is entitled to consideration for a pardon under the Governor's guidelines. If no such information is included in the application or furnished to the Board, the applicant will be advised that the application cannot be processed further until such information is received.

2. The Board shall review the application and supporting information and determine whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for a hearing. If the applicant is determined not to be eligible for consideration, he or she shall be advised of this and of the reasons he or she is not eligible for consideration.

(c) Commutation Requests.

1. The Board shall review the application and any supporting information and determine whether the applicant falls within the Governor's guidelines and the Board's screening factors, and whether the applicant should be scheduled for a hearing. The Board's files shall reflect the action of the Board in scheduling the case for hearing.

2. If the applicant does not fall within the Governor's criteria, the applicant shall be advised as to why he or she is not eligible for consideration and will not be scheduled for a hearing. He or she shall be advised of the date on which he or she will be eligible and may reapply for consideration, provided that none of the Board's screening factors are amended by the Governor to prevent such consideration.

(d) General Procedure for Clemency Requests and Hearings.

1. All requests for executive clemency shall be responded to in a timely manner. After the application is received, the applicant and his or her attorney shall be advised as to whether the case is to be scheduled for a hearing and the date, time, and place of any hearing. All hearings shall be held promptly following the notice to the applicant and his or her attorney, unless it is continued at the Board's discretion, upon the request of the applicant or his or her attorney, or pending receipt by the Board of essential information. The notice shall advise the applicant that he or she is entitled to appear at the hearing and to present witnesses and other evidence on his or her behalf. Such notice shall also include a description of the type of evidence considered by the Board.

2. At the same time that notice is sent to an applicant and his or her attorney, the appropriate Judge and District Attorney General shall be notified that the case has been set for hearing and given the date, time, and place. The notice to the Judge and District Attorney shall indicate that the Board solicits and welcomes their views and recommendations concerning clemency for the applicant.

3. The Board's staff may compile any or all of the following information for the Board's consideration at the hearing:

   (i) a reclassification or parole summary completed by the institutional staff, if the applicant is an inmate;

   (ii) information about the facts and circumstances surrounding the offense and conviction. Such information shall be obtained through investigations conducted by a Probation/Parole Officer or other individual designated by the Board;

   (iii) a psychiatric or psychological evaluation if the applicant is an individual convicted of a sexual offense or sex related crime;

   (iv) information about medical, mental and/or family problems or needs obtained through investigation by a Probation/Parole Officer or other individual designated by the Board, if appropriate; and

   (v) the application, original request, supporting evidence, and any correspondence in the Board's file concerning the application.

4. If the applicant is requesting a pardon, the following additional information shall be obtained:

   (i) information obtained for FBI and local records checks;

   (ii) information regarding recent social history and reputation in the community; and

   (iii) information verifying reasons for pardon request.

5. Although the Board's staff obtains the above information so that clemency hearings not be completely ex parte in nature, the burden remains on the applicant to establish that he or she is entitled to clemency.

6. At a clemency hearing the Board shall consider, but is not limited to, the following factors:

(i) the nature of the crime and its severity;

(ii) the applicant's institutional record;

(iii) the applicant's previous criminal record, if any;

(iv) the views of the appropriate trial Judge and the District Attorney General who prosecuted the case;

(v) the sentences, ages, and comparative degree of guilt of co-defendants or others involved in the applicant's offense;

(vi) the applicant's circumstances if returned to the community;

(vii) any mitigating circumstances surrounding the offense;

(viii) the views of the community, victims of the crime or their families, institutional staff, Probation/Parole Officers, or other interested parties; and

(ix) medical and psychiatric evaluations when applicable.

7. The Board will inform the applicant and his or her attorney, if present, of its recommendation at the end of the hearing or, in its discretion, will take the case under advisement. In either event, the Board shall advise the applicant that its recommendation to the Governor is non-binding and that the Governor will review any recommendation by the Board.

8. The Chair shall designate one member of the Board to write a report to the Governor concerning the case. The report shall include:

(i) a brief statement of the reasons for the recommendation;

(ii) the complete file;

(iii) the views of the various Board Members, if the recommendation is not unanimous; and

(iv) the specifics of the recommendation, whether it is a positive or negative one, and if a positive recommendation is made, any terms and conditions recommended by the Board.

(e) Emergency Medical Clemency Requests. In a small percentage of cases, it is necessary and appropriate that the Board consider requests by individuals recommended for clemency by the Department of Correction's medical staff. At times, these individuals may lack competency to apply on their own behalf and the request may be made by the

medical staff. These requests are made in unusual or emergency medical situations and may require immediate action by the Board. In such cases, a complete medical report and a detailed statement of the emergency situation will accompany the Board's report to the Governor.

(f) As soon as practicable after the Board's clemency recommendation, it shall forward or cause to be forwarded to the appropriate standing committees of the General Assembly, designated by the Speaker of the Senate and the Speaker of the House of Representatives, a written list of the names of all persons receiving both favorable and unfavorable recommendations.

(g) The list required by subsection (f) shall also be furnished to the appropriate Attorney General in whose district any such person was convicted.

(h) ~~Board~~ Supervision of Commutees.

1. ~~—~~When the Governor of the State of Tennessee commutes an offender's sentence and makes community supervision ~~by the Board~~ a condition of such commutation, ~~the Board~~TDOC shall assign the commutee a Probation/Parole Officer in the same manner as if the offender had been released on parole.

2. If the Probation/Parole Officer supervising such commutee has reasonable cause to believe such person has violated the conditions of his or her commutation, the Officer shall detail the circumstances of the alleged violation in the form of an affidavit and transmit such affidavit to the Director of Probation and Parole. In no event shall the Probation/Parole Officer arrest, detain, or cause the arrest or detention of a commutee unless done on the basis of a warrant from the Governor.

3. The Director shall review and shall immediately transmit, in appropriate cases, affidavits received pursuant to this subsection, to the office of the Governor.

4. At the request of the Governor, the Board shall conduct a commutation revocation hearing to determine if a commutee has violated the conditions of his or her commutation. The Board will conduct such hearings in the same manner and use the same procedures as parole revocation hearings are conducted pursuant to rule 1100-01-01-.14.

5. At the conclusion of the hearing the Board shall transmit the record of such hearing, together with the Board's non-binding findings and recommendations concerning the alleged commutation violation, to the Governor.

Authority: T.C.A. §§40-27-101, 40-27-102, 40-27-104, 40-28-104, 40-28-106, 40-28-107, 40-28-114 and 40-28-126. Administrative History: Original rule filed December 6, 1979; effective January 20, 1980. Amendment filed March 11, 1985; effective April 10, 1985. Repeal and new rule filed August 31, 1990; effective November 28, 1990. Repeal and new rule filed May 5, 2009; effective September 28, 2009. Repeal and new rule filed _____

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Richard Montgomery	Aye				
Barrett Rich	Aye				
Gay Gregson	Aye				
Roberta Kustoff	Aye				
Zane Duncan	Aye				
Gary Faulcon	Aye				
Tim Gobble				Absent	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board (*board/commission/other authority*) on 09/27/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 11/8/18

Signature: Jim Purviance

Name of Officer: Jim Purviance

Title of Officer: Executive Director

Subscribed and sworn to before me on: 11-8-2018

Notary Public Signature: Rachel Hitt

My commission expires on: 12-16-18

Agency/Board/Commission: Tennessee Board of Parole

Rule Chapter Number(s): 1100-01-01-.01 to 1100-01-01-.16

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

Herbert H. Slatery III
Attorney General and Reporter

12/7/2018
Date

Department of State Use Only

Filed with the Department of State on: 12/14/18

Effective on: 3/14/19

Tre Hargett
Secretary of State